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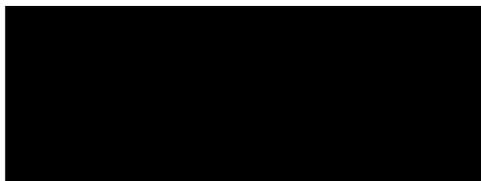
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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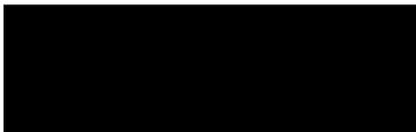
Date:

JAN 13 2010

IN RE:

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)

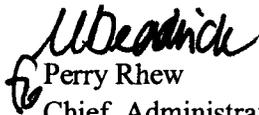
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, 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 in the sciences. The director determined that the petitioner had not established 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 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).

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner also requests oral argument before the AAO stating:

It is understandable that the USCIS [U.S. Citizenship and Immigration Services] officer who reviewed my petition would not be a professional peer in the field, and the written material or evidence I provided could either be ignored or misunderstood. Therefore, I request an oral argument before the AAO in Washington, D.C.

With regard to the petitioner's request for oral argument, the regulations provide that the requesting party must explain adequately in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved that cannot be addressed in writing. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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.

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 April 2, 2008, seeks to classify the petitioner as an alien with extraordinary ability in optical sciences and engineering. At the time of filing, the petitioner working for [REDACTED] [REDACTED]. Previously, the petitioner earned his Ph.D. in Optical Sciences from the University of Arizona. The petitioner then worked as a postdoctoral researcher at the University of Arizona, Utah State University, and Indiana University before taking an engineering position with [REDACTED] in 2007.

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).¹

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major

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

media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted a six-sentence paragraph in the “Applied Physics” section of “Highlights of the Recent Literature: Editors’ Choice” in the January 4, 2002 issue of *Science*. This paragraph briefly summarizes results published in an article first-authored by [REDACTED] and coauthored by the petitioner in *Applied Physics Letters* in December 2001. The Editors’ Choice paragraph specifies [REDACTED] by name, but it does not mention the petitioner, who was among Fein’s four coauthors. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.” This material is not about the petitioner and does not meet the requirements of this regulatory criterion.

The petitioner submitted eighteen additional articles that cite to his research work. Regarding the scientific articles that merely reference the petitioner’s work, we again note that the plain language of this regulatory criterion requires that the published material be “about the alien.” In this case, the articles citing to the petitioner’s work are primarily about the authors’ work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien’s work without evaluation is of minimal probative value. Further, we note that the articles citing to the petitioner’s work similarly referenced numerous other authors. The submitted citations to the petitioner’s work do not discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work so as to be considered published material about the petitioner as required by this criterion. Instead, these citations are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be addressed there.

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

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

The 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.³ 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

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

³ 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) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

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 initially submitted electronic correspondence showing that he reviewed two manuscripts for *Optics Express*, two manuscripts for *Optics Letters*, and two manuscripts for *Applied Optics*. The petitioner also submitted electronic correspondence sent in response to his request to serve as a peer reviewer for *Optics Communications* and *Journal of Applied Remote Sensing*. The editor and peer review coordinator of the preceding two journals both thank the petitioner for expressing “interest in serving” as reviewer, but there is no evidence showing that he actually completed any manuscript reviews for their journals.

The petitioner submitted a document entitled “Optical Society of America [OSA] Guidelines for Editors.” Part II, “Policies Concerning Editors,” section B, “Qualifications” states: “Editors must be OSA members. They must be well known, recognized, and respected for achievements in their field. A record of publications in recognized journals is essential. Editors must have an excellent reviewing record, characterized by timeliness, fair mindedness, and efficiency.” Appendix B, “Suggestions to Topical Editors on Choosing Reviewers,” item 3 states:

Use of prominent reviewers.

Topical editors should avoid the overuse of prominent researchers as reviewers, since these people get many requests for reviews. Less well-known researchers, post-docs, and senior graduate students frequently write more careful reviews than better known scientists who are too busy to take the time. The best use of prominent researchers is to ask them to suggest junior associates in their departments or groups who would be suitable reviewers.

According to the preceding information, the OSA recommends using “less well-known researchers, post-docs, and senior graduate students” and “junior associates” as manuscript reviewers rather than “prominent researchers” who are well known in the field.

In response to the director’s request for evidence, the petitioner re-submitted copies of the six manuscript review requests from *Optics Express*, *Optics Letters*, and *Applied Optics* that accompanied his initial documentation. The petitioner also submitted a February 27, 2009 request to review a manuscript for *Optics Express* and June 26, 2008; August 7, 2008; and November 20, 2008 requests to review manuscripts for *Applied Optics*. The preceding manuscript review requests post-date the filing of this petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider manuscript reviews completed after April 2, 2008 in this proceeding.

We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. Further, we cannot ignore that the OSA’s official guidelines specifically recommend using “less well-known researchers, post-docs, and senior graduate students” and “junior associates” rather than “prominent researchers.” Thus, occasional participation in the peer review process is not an indication 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. For instance, in response to the director's request for evidence, the petitioner submitted a document entitled "Guidelines of the Optical Society of America Concerning Ethical Practices in the Publication of Research" which states: "Inasmuch as the reviewing of manuscripts is an essential step in the publication process, scientists have an obligation to do a fare share of reviewing." Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles for multiple journals or served in an editorial position for a distinguished journal in the same manner as one of his references,⁴ we cannot conclude that he meets this criterion.

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

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

The petitioner submitted several letters of support.

states:

[The petitioner] reports to me in

* * *

[The petitioner] has provided us with detailed understanding and modeling of the optical architectures in semiconductor wafer inspection system. Working with him we have been able to diagnose and debug the abnormal performances of UV illumination and imaging system by mathematical simulation, and we have been able to identify and eliminate the defects in the optical design of our new products.

During the past half year, [the petitioner's] significant expertise has . . . been extremely helpful to us in developing advanced UV illumination system for semiconductor wafer inspection tools, conducting optical researches to improve detection capability in the presence of real hardware noise features, determining signal to noise ratios on various breadboard systems and validate their advantages and disadvantages, and providing support and feedback to the hardware team.

⁴ For example, one of the petitioner's references, serves on the editorial board of *Investigative Ophthalmology and Vision Science*, a reputable journal in the field.

While the petitioner has performed admirably on his recent projects for [REDACTED] there is no evidence demonstrating that the preceding work is recognized beyond his employer such that it equates to original contributions of major significance in the field.

[REDACTED] University of Arizona, states:

I have personally known [the petitioner] since 1999, when he became one of my students in the College of Optical Sciences. He had been a Graduate Research Assistant/Associate for five years in my lab (NanoVision Lab), and he got his Ph.D. degree under my supervision.

* * *

While pursuing his Ph.D. degree, [the petitioner] developed a novel experimental configuration by combining the chemical analytical power of Raman spectroscopy with the spatial resolution of atomic force microscopy (AFM). In this Raman-AFM system, a gold coated AFM probe was used to significantly enhance the Raman signal by laser excitation of surface plasmons in the tip coating. . . . This Raman-AFM technology provides the materials and biological research with unique capabilities (topography and spectroscopy) not available in current instrumentation. It enables chemical sensing of biological macromolecules at very high spatial resolution (single molecule or only a few molecules). It can be applied to DNA-protein interactions and sequencing. It offers a method of measuring targeted small-molecule spectroscopy and spectroscopy of functional groups on macromolecules.

* * *

[The petitioner] and his collaborators were the first to develop an imaging-ellipsometry-based microarray reader, which can sense refractive index changes as small as 0.0024 and thickness changes as small as 0.28 nm. This instrument is demonstrated as a highly-sensitive alternative to fluorescence-microarray readers in their outstanding article in the *Journal of Biomedical Optics* (2005). Such a label-less method to read microarrays is desirable because the attachment of a fluorescent label to the analyte can alter its binding characteristics and may not provide a realistic picture of its biological activity. The label-less method also merits in eliminating the additional steps of purification of the labeled analytes and the requirement for photostability of the fluorescent dyes.

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

[REDACTED] states:

[The petitioner] was a colleague of mine when I was working as a visiting scholar in Optical Sciences Center, University of Arizona during the years 2002-2004.

* * *

[The petitioner] and his collaborators demonstrated, for the first time, that by using a tapping mode Atomic Force Microscope (AFM) with an conducting AFM probe, current density pulses . . . can be injected into conducting samples under a range of experimental conditions. . . . Since non-chaotic, reproducible tip-sample interactions for every single tap is achieved in their experiment, therefore, the application of this tapping-AFM current injection method can markedly increasing the bit rate of MEMS based data storage, which is expected to employ hundreds of AEM probes operating in parallel to write, read, and rewrite information on media. This work, together with his other article entitled "Comment on reversible, nanometer-scale conductance transitions in an organic complex," represents a scientific breakthrough in the application of SPM as a reading and writing method in data storage, and organic material as a data storage medium.

* * *

In 2001 [the petitioner] and his collaborators turned to explore Surface Enhanced Raman Scattering (SERS) effect in the vicinity of noble metal films with a suitable topology. At the first year of their project, SERS effect was demonstrated for two different films, one of self-assembled gold particles, and one of a nanoscale lattice structure. Then by fabricating an AFM tip with a similar metal film, they employed the SERS effect to build a Raman-AFM experimental configuration, which is capable of measuring the chemical characteristic of organic thin film with nanometer spatial resolution. . . . In their article entitled "Enhanced Raman scattering for temperature measurement of a laser-heated atomic force microscope tip," [the petitioner] and his collaborators demonstrate the Raman-AFM as a non-contact absolute thermometry technique to map the local temperature across thin film samples with extremely high temporal and spatial resolution. I believe this thermometry method will be extremely useful in data storage applications where local heating and temperature measurement are critical. Furthermore, since nanoscale spatial resolution can be acquired with this method, it offers the potential to push current data storage technology to achieve ever greater data density.

expresses his belief that the petitioner's method "will be extremely useful" and that it "offers the potential . . . to achieve ever greater data density." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Rather than providing specific examples of how the petitioner's work has already had a significant impact in the field, instead provides his opinion regarding its future potential.

Department of Photonics and Display Institute, National Chiao Tung University, states:

I am impressed by [the petitioner's] presentations in the international conferences hel[d] by professional organizations such as the International Society for Optical Engineering (SPIE) and the Optical Society of America (OSA). His Ph.D dissertation focused on building a Raman-AFM system by integrating an optical microscopic imaging system, a Raman spectrograph system, and an Atomic Force Microscope (AFM) together. This work . . . is significant because it reveals the possibility of imaging the chemical characteristics of a single organic molecule. Also in a paper published in 2005, he and his collaborator demonstrate that the ratio of Stokes to anti-Stokes Raman scattering can be used in the Raman-AFM system to obtain an instantaneous and absolute map of the local temperature across the thin film. This technique is very important in high-density, heat-assisted magnetic recording, optical data storage using phase-change media and thermomechanical recording systems.

[The petitioner] is also well known internationally for his research contributions to optical imaging applied to eye fungus research. . . . The papers he presented in GSA annual meeting represent a major breakthrough in the development of low cost imaging devices for detection of retinal diseases. This is an extremely low cost, high capability imaging system for examining the inside of the eye in real time. The application of this Laser Scanning Digital Camera (LSDC) in telemedicine has the potential of markedly improving the connection between underserved patients and visual healthcare providers. . . . In the 2007 annual conference of the Association for Research in Vision and Ophthalmology (ARVO), he demonstrated the capability of confocal-LSDC as a practical imaging device for the early detection of diabetic retinopathy, which is the leading cause of blindness of millions of patients in United States. The application of confocal-LSDC in diabetic retinopathy screening could prevent many of them from suffering the loss of vision.

and a number of the petitioner's other references point out that the petitioner has presented the results of his research at various professional conferences. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with numerous other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at venues where the petitioner's work appeared was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his specialty or equate to contributions of major significance in his field.

[redacted] of Optometry and Director of the Borish Center for Ophthalmic Research, Indiana University, supervised the petitioner's postdoctoral research and coauthored several conference presentations with him. [redacted] states:

One of [the petitioner's] accomplishments that has attracted wide attention is his optical design for the Laser Scanning Digital Camera ([REDACTED]). This design is paradigm shattering, in that it allows imaging of a patient's retina without the need for dilating drops, while affording excellent image contrast and a wide field of view. To date, there is no instrument on the market that is cost effective and has these features. There exist high cost instruments to do this, or ones that need no drops and produce useful images only sporadically. [The petitioner] presented data from this device at ARVO, 2007, and attracted considerable international attention. German, US, Japanese, and English firms showed great interest. [The petitioner's] expertise from wide field microscopy fed directly into a successful optical design that has not been achieved elsewhere to date, an indication of his outstanding range of abilities as an optical engineer. This optical design will lead to an instrument that may help save the sight of people world wide.

[The petitioner] also has distinguished himself in new polarimetry work, independent of his colleagues at the University of Arizona ([REDACTED]), in devising a method to quantify the health of the retina in a noninvasive manner and possibly an order of magnitude less costly than previous methods. This work required not only the techniques of polarimetry [REDACTED], but also the type of detailed computation that is evidenced in his previous Raman and nanoscale work

[REDACTED] letter states that German, U.S., Japanese, and English firms showed great interest in the petitioner's LSDC optical design, but her letter does not specify which firms. In this case, there is no evidence showing that the petitioner's device has been licensed, successfully marketed as a retina screening instrument, or otherwise had a significant national or international impact in the optics industry such that it equates to an original contribution of major significance in his field.

[REDACTED], School of Optometry, Indiana University, states:

In January 2006 I joined the lab of [REDACTED] at Indiana University as a Senior Scientist and manager of the Laser Scanning Digital Camera project. Shortly thereafter, [the petitioner] joined the group

* * *

[The petitioner] has designed the complete optical system of the Laser Scanning Digital Camera project that has an almost impossible list of conflicting requirements: large field of view, small pupil, high resolution, low cost. With his vast knowledge and experience, [the petitioner] has significantly advanced the possibilities of near infra-red imaging technologies in the human eye from prior art, when low cost is an additional principal parameter. Many leading international companies active in the ocular imaging sector, such as Topcon, Keeler, Heidelberg Engineering, spent a long time discussing the unique aspects of his work with [the petitioner], some even came back several times with their colleagues, trying to understand his design.

* * *

More recently, [the petitioner] has substantially augmented our polarization sensitive imaging research in the eye, specifically for the fovea, which is the part of the retina most crucial to our vision sense. His advanced mathematical treatment of images from the parallel and crossed analyzers and detectors allows the removal of the fixed corneal compensator from our instrument, which is not optimized for each eye. [The petitioner's] pioneering method allows to mathematically remove the unwanted contribution of the corneal birefringence from the retinal images individually for each patient.

[REDACTED] Department of Physics, Tsingha University, where the petitioner earned his bachelor and master's degrees, states:

The first time I met [the petitioner] was in February 1995. . . . Ever since then, I have been aware of [the petitioner]'s progress in his scientific career

* * *

For example, [the petitioner's] recent paper (published in *Optics Letters*) with [REDACTED] and Burns has demonstrated, for the first time ever, a method to obtain the polarization properties of single cells in the living human eyes. The application of this cellular level polarimetric technique to *in vivo* retinal imaging has allowed ophthalmologists to improve the imaging contrast of retinal structures based on their polarization properties. Therefore, their work may significantly advance the technology in understanding and diagnosing human eye diseases.

Vision health care is not the only field which benefit from [the petitioner's] unique ability to apply optics to important problems. His papers have also been cited and discussed by scientific journals in a wide variety of fields, including Applied Chemistry, Biology Engineering, Material Science, and Mechanics.

With regard to the petitioner's published and presented work as discussed by [REDACTED] and [REDACTED] 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. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner's published and presented work under the next criterion.

The letters from [REDACTED] note that the petitioner's work has been cited to by others in his field. In support of their statements, the petitioner submitted copies of nineteen articles citing to

his body of work. While the citation evidence submitted by the petitioner demonstrates some outside interest in his research findings, he has not shown that an aggregate of less than twenty independent citations during his career is an indication that his work equates to original contributions of major significance in the field. *See also Kazarian v. USCIS*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

Chief Technology Officer and Co-founder, Pavilion Integration Corporation, states:

[The petitioner's] recent effort has been focused on developing a retinal imaging device, Laser Scanning Digital Camera (LSDC). This kind of instrument is broadly regarded as a key to implement national screening for diabetic retinopathy (DR) because of its low cost.

* * *

In additional [sic] of low cost, the retinal imager for diabetic retinopathy screening has a stringent list of requirements, such as a large field of view, non-mydratic, small pupil, high resolution, etc. With his vast knowledge and experience, [the petitioner] successfully designed and developed the LSDC optical system with all the important requirements satisfied. . . . I strongly believe that, after FDA approval, this device will provide physicians with an inexpensive, easy-to-handle, and comfort-for-patients tool for diabetic retinopathy screening.

With regard to the witnesses of record, many of them they discuss what may, might, or could one day result from the petitioner's work, rather than how his past research achievements already qualify as original contributions of major significance in the field. For example, and all discuss the potential of his LSDC optical device. As discussed previously, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner performed admirably on the research projects to which he was assigned, the submitted documentation does not establish that he has already made original scientific contributions of "major significance" in his field commensurate with sustained national or international acclaim. For example, the record does not indicate the extent to which his work has impacted others in his field nationally or internationally, nor does it show that the field has significantly changed as a result of his work.

In this case, the letters of recommendation are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately

responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an optical research engineer who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted evidence of his co-authorship of articles in publications such as *Applied Physics Letters*, *Optics Letters*, and *Journal of Biomedical Optics*. The petitioner also submitted evidence showing that he coauthored papers for presentation at annual meetings of the ARVO, the SPIE, and the OSA. 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 scientific community's reaction to the petitioner's published work in a field where publication is expected. *See Kazarian v. USCIS*, 580 F.3d at 1036. As authoring scholarly articles is inherent to science and engineering research, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by his work and are familiar with it. 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. As previously discussed, the petitioner submitted evidence showing that his body of work has been independently cited less than twenty times. While these 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. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2). The petitioner relies on his volunteer services as a manuscript reviewer, his publication record, less than twenty cites to his published work, and the praise of his peers. While this evidence may distinguish him from other postdoctoral researchers receiving advanced training in a university setting, we will not narrow his field to others with his level of training and experience. A comparison of the petitioner's positions and

achievements with those of his superiors at the University of Arizona and Indiana University indicates that the very top of his field is a level above his present level of achievement. For example, [REDACTED] is a Professor of Optometry and Director of the Borish Center for Ophthalmic Research at Indiana University, has authored well over 100 scientific publications, serves on the editorial board of *Investigative Ophthalmology and Vision Science*, and is a Fellow of the Optical Society of America. [REDACTED] is Professor of Optical Sciences and Director of the Optical Data Storage Center at the University of Arizona, has authored more than 150 refereed papers in major scientific journals, has seven United States patents, and is a fellow of both the SPIE and the OSA. Thus, it appears that the highest level of the petitioner's field is well above the level he has presently attained.

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

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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.