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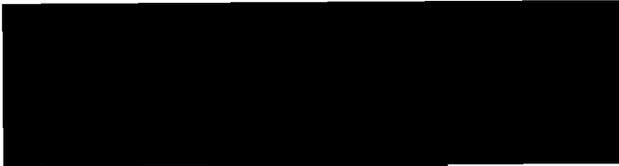
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **MAR 05 2010**  
SRC 08 800 34189

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, Texas Service Center, on April 21, 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 she 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 she has sustained national or international acclaim at the very top level.

This petition, filed on August 25, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist.

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).

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

Counsel claims the petitioner's eligibility for this criterion based on her:

1. Selection to give an oral presentation at the 6<sup>th</sup> International Conference on Zebrafish Development and Genetics (ICZDG) in 2004;
2. Selection to attend an embryology course at Marine Biology Laboratory (MBL) in 2005;
3. Fellowship from the Juvenile Diabetes Research Foundation (JDRF) in 2007;
4. Best Poster Award at the 7<sup>th</sup> ICZDG in 2006; and
5. Best Poster Award at the Southeast Regional Meeting of the Society of Development Biology (SDB) in 2006.

Regarding item 1, counsel submitted a letter, dated July 16, 2008, from [REDACTED] Ph.D., Professor of Biological Sciences at Vanderbilt University, and a copy of the petitioner's presentation, "Proper convergence and extension of paraxial mesoderm is essential for slow-twitch muscle morphogenesis in zebrafish." [REDACTED] stated:

In 2004, [the petitioner] was selected by the organizers to give an oral presentation at the 6<sup>th</sup> International Conference on Zebrafish Development and Genetics, which is the largest international conference in the zebrafish field that attracts over 1000 researchers world-wide. Selection of presenters at this meeting is based on the caliber of the researchers and the importance of the research they are conducting as well as its relevance to an international audience of accomplished researchers. Among the 633 abstracts submitted in 2004, only 123 were selected by the organizers as oral presentations.

Regarding item 2, counsel submitted a document from MBL certifying that the petitioner successfully completed "Embryology: Concepts and Techniques in Modern Developmental

Biology” from June 11 – July 24, 2005; a document from [REDACTED] for MBL; a letter, dated March 10, 2008, from [REDACTED], Howard Hughes Medical Institute; a course summary from MBL’s website; and information regarding MBL from the website *Wikipedia*<sup>1</sup>. [REDACTED] stated:

Students are evaluated on the basis of their performance in the discussions and laboratory, and on about six oral presentations that each makes to the entire group. Students often design and conduct individual research projects paralleling the instructional curriculum. Round-the-clock scientific inquiry, fostered by close working relationships with faculty and students, and 24-hour access to the MBL library and state-of-the-art instrumentation, are hallmarks of this and all other MBL courses. At our home institutions, the Berkeley and Santa Barbara campuses of the University of California, a student would receive at least 6 units of credit for an international course of this scale. Moreover, the course is taught at a higher level than graduate-level courses in Developmental Biology at our home institutions (MCB 231 at UC Berkley or MCDB 225 at UC Santa Barbara).

Further, [REDACTED] stated:

The MBL Embryology course is among the most prominent advanced Developmental Biology courses in the world. [The petitioner] was one of the 24 students who were strictly selected by the review panel from hundreds of applicants worldwide.

Regarding item 3, counsel submitted a letter, dated December 7, 2007, from [REDACTED], and [REDACTED] from JDRF notifying the petitioner that her Postdoctoral Fellowship Grant was recommended for \$42,496 for Year 1 and \$44,476 for Year 2; a letter, dated February 4, 2008, from [REDACTED] for JDRF, indicating that the petitioner received a grant for “Molecular Regulation of Beta Cell Differentiation in Zebrafish” in the amount of \$86,972; an

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<sup>1</sup> There are no assurances about the reliability of the content from this open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, No. 07-2276 (8<sup>th</sup> Cir. August 29, 2008). Accordingly, we will not assign weight to information from *Wikipedia*. See also the online content from [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on December 29, 2009, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Activation Budget Acceptance Form – Postdoctoral Fellowships from JDRF; and application procedures and guidelines for research grants and fellowships awards from JDRF’s website.

The preceding evidence does not establish that the petitioner’s oral presentation at ICZDG, successful completion of a course at MBL, and fellowship from JDRF are tantamount to her receipt of nationally or internationally recognized awards for excellence in the field. The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the “receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Counsel failed to establish how the petitioner’s selection to give an oral presentation is a nationally or internationally recognized prize or award. Notwithstanding, even if we would recognize ICZDG’s decision to allow the petitioner’s abstract to be presented orally at a conference as an award, which we do not, we note that 123 out of 633 (19%) abstracts were selected to give oral presentations. Such a percentage is not indicative of this highly restrictive classification and commensurate with the requisite sustained acclaim. Counsel failed to establish that the petitioner’s oral presentation is tantamount to a nationally or internationally recognized award or prize.

Regarding the petitioner’s selections and participation of an embryology course at MBL, academic study is not a field of endeavor, but training for a future field of endeavor. As such, being invited to attend an academic course cannot be considered a prize or award in the petitioner’s field of endeavor. Moreover, competition for course attendance at MBL is limited to other students. Experienced experts in the field are not seeking course attendance at MBL. Thus, they cannot establish that a petitioner is one of the very few at the top of her field.

Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien’s ability to benefit the national interest. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Commr. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien’s eligibility for this more exclusive classification.

Regarding the petitioner’s fellowship from JDRF, research grants simply fund a scientist’s work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. We are not persuaded that the fact that the postdoctoral fellowship at the University of California, San Francisco, an undeniably prestigious institution, converts what is otherwise an entry-level job offer into a nationally or internationally recognized prize or award.

Regarding items 4 and 5, counsel submitted a letter from [REDACTED], team leader for the 7<sup>th</sup> ICZDG; two letters, dated January 29, 2008, and February 23, 2009, from [REDACTED] organizer of the 2006 Southeast Regional Meeting of SDB; and the previously mentioned letter from [REDACTED]. Dr. [REDACTED] stated:

At the 7<sup>th</sup> conference, there were 508 poster presentations. The posters were judged by twenty principal investigators who are experts in zebrafish research and come from across the world. The poster prizes are awarded to presenters whose posters are of high quality and have a high impact. Among all the posters, only two first-place prizes were awarded. [The petitioner] got one of the first place awards at the conference, when she conducted research on zebrafish gastrulation movements in [REDACTED] laboratory at Vanderbilt University. This indicates that she is carrying out top-level science and has received international recognition.

[REDACTED] stated that “[t]he Southeast Regional Meeting occurs annually and is supported, in part, by Society funds. [The petitioner’s] award, therefore, is not local or institutional but is recognized nationally and internationally.” While the letters demonstrate that the petitioner’s posters were judged by “experts in zebrafish research,” the record reflects that these poster competitions were student competitions. In fact, [REDACTED] stated that “[the petitioner] received the best graduate student poster award at the 7<sup>th</sup> International Conference on Zebrafish Development and Genetics.” Further, [REDACTED] stated that the petitioner was “awarded First Prize in the graduate student poster competition.”

We also note that while counsel did not specifically address another award, the record also reflects that the petitioner was awarded the Graduate Research Excellence Award in Biological Sciences from Vanderbilt University. Counsel submitted a certificate of the petitioner’s award along with information from Vanderbilt University stating that the “award is presented annually to a graduate student of at least third year status who has performed outstanding and scholarly research over a sustained period of his/her tenure in the Department of Biological Studies.”

With regard to awards won by the petitioner at student level competition, we cannot conclude that such awards indicate that she “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

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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.

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.”

Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no evidence showing that the petitioner’s awards commanded a significant level of recognition beyond the context of the events where they were presented. For example, there is no evidence showing that *the petitioner’s awards were announced in major media or in some other manner consistent with national or international acclaim*. Accordingly, the petitioner has not established that the poster competitions resulted in her receipt of nationally or internationally recognized prizes or awards.

*In addition, there is no evidence demonstrating that the petitioner’s awards and university honors are tantamount to nationally or internationally recognized prizes or awards for excellence in the field. The petitioner’s awards are limited to student level competitions and institutional recognition rather than national or international recognition. The petitioner’s receipt of such awards offers no meaningful comparison between her and experienced professionals in the field who have long since completed their educational training.*

Accordingly, the petitioner has not established that she 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.*

Counsel claims the petitioner’s eligibility for this criterion based on her membership with the SDB and Sigma Xi. Regarding SDB, counsel submitted an email from [REDACTED], Executive Director of SDB, welcoming the petitioner as a member of SDB. Counsel also submitted membership information from SDB’s website. While the documentation provides the benefits of SDB membership, the documentation submitted by counsel does not reflect the requirements for SDB membership. According to SDB’s membership application<sup>3</sup>, obtained based on the reference contained in SDB materials submitted in support of the petition, the applicant chooses the type of membership: full member, post doctoral, and student, and then submits the appropriate fee. Counsel failed to submit documentation, and the website does not indicate, any other SDB membership requirements. Therefore, other than submitting the membership application and paying the appropriate fee, counsel failed to establish any prerequisite for membership with SDB, much less that outstanding achievements are required.

Regarding the petitioner’s membership with Sigma Xi, counsel submitted a certificate indicating that the petitioner “was duly elected a Member by the Committee on Qualifications and Membership of

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<sup>3</sup> See <https://mercury.faseb.org/membership/sdb/NewMember/Default.aspx>, accessed on December 29, 2009, and incorporated into the record of proceeding.

the Society in the year 2008.” Counsel also submitted membership information from Sigma Xi’s website. According to the website, “[m]embership in Sigma Xi is by invitation. Those who have shown potential as researchers are invited to join as associate members. Full membership is conferred upon those who have demonstrated noteworthy achievements in research.” In addition associate membership requires:

An individual who has conducted independent investigation and written a report concerning their research is eligible for election to Associate Membership. This initial research achievement can be in a field of pure or applied science. The individual is expected to later achieve the requirements for Full Membership. Nominators are attesting to the nominee’s potential to be promoted to Full Membership in the future. Associate Membership is offered to encourage young investigators with promise to continue careers in research.

Further, full membership requires:

An individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election for Full Membership. This noteworthy achievement must be evidenced by publication as a first author on two articles published in a referred journal, patents, written reports or a thesis or dissertation.

While the certificate from Sigma Xi establishes that the petitioner is a member, the certificate does not distinguish the petitioner’s membership status as either an associate member or full member. Notwithstanding, the submitted materials 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.” A noteworthy achievement is not necessarily an outstanding achievement given that a noteworthy could be two first-authored articles, one of which could be a thesis or dissertation. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. It remains, a “noteworthy” achievement, as defined by the society, is not an outstanding achievement. An organization that boasts 60,000 members does not represent only that very small percentage at the top of the field.

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 failed to establish that membership with Sigma Xi and SDB requires outstanding achievement as judged by recognized national or international experts. We concur with the director that the petitioner's membership in Sigma Xi and SDB cannot serve to meet this criterion.

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

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

Counsel claims the petitioner's eligibility for this criterion stating that her "work has been widely reported by major trade publications and media." In addition, counsel stated on appeal:

In its decision, Texas Service Center went into great length to explain the difference between published materials about one's work and citations of one's papers, but otherwise fell short of examining the evidence presented to determine if it is "published material about the petitioner's work" or "citation."

\* \* \*

[The petitioner] is aware of this distinction and did not present citation evidence under this criterion. Instead, she submitted abundant evidence on published materials about her work which not only describes her research findings but also comment on the merits and the significant impact of her work. Texas Service Center failed to consider such evidence and thus erred in concluding that [the petitioner] failed to meet this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) which only requires published material about the alien's work. Articles authored by the petitioner, or articles which cite the petitioner's work, are not articles about the petitioner relating to her work. Thus, while her publications and citations therein are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner's contributions and scholarly articles.

However, we do note that the petitioner submitted 13 non-scholarly articles:

1. *Eating the Way to Fewer Birth Defects*, Therapy Times, September 5, 2006;
2. *Study Illuminates Birth Defects Caused by Copper Deficiency*, FirstScience.com, August 8, 2006;
3. *Unmasking Nutrition's Role in Genes and Birth Defects*, Medical News Today, August 12, 2006;
4. *Key to New Therapies for Birth Defects May Be Found by Using the Zebrafish*, Medical News Today, August 12, 2006;
5. *Nutrition's Role in Genetics is Studied*, United Press International, August 8, 2006;
6. *Humble Aquarium Fish May Be the Key to New Therapies for Birth Defects*, ScienceDaily, August 9, 2006;
7. *Unmasking Nutrition's Role in Genes and Birth Defects*, ScienceDaily, August 15, 2006;
8. *Researchers Discover How Genes and Diet Interact to Cause Birth Defects*, News-Medical.Net, August 8, 2006;
9. *Role of Nutrition in Birth Defects*, Advance, December 11, 2006;
10. *The Tail-End of Development*, Unidentified Author and Date;
11. *Unmasking Nutrition's Role in Genes and Birth Defects*, Bio-Medicine, August 8, 2006;
12. *Unmasking Nutrition's Role in Genes and Birth Defects*, Natural News, October 6, 2006; and
13. *Study Illuminates Birth Defects Caused by Copper Deficiency*, Foodconsumer.org, August 10, 2006.

Regarding item 10, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.” However, counsel failed to include the date and author of the article. As such, the AAO cannot determine whether the evidence supports counsel's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. We also note that items 7, 11, and 12 are the same articles but appear in different publications.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

A review of the articles reflect that they are not primarily or principally “about” the petitioner. Instead, the articles revolve around reports of the petitioner’s research. In fact, the petitioner’s name

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<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

is mentioned only one time in all of the articles as a collaborator with other students and professors in the research.

Notwithstanding the above, counsel failed to establish that any of these publications are professional or major trade publications or other major media. While counsel submitted “About Us” information from Therapytimes, FirstScience.com, Medical News Today, United Press International, ScienceDaily, News-Medical.Net, Advance, Bio-Medicine, Natural News.com, and Foodconsumer.org, all of the information comes from these publications themselves. Counsel failed to submit independent evidence establishing that these publications are professional or major trade publications or major media. In addition, we note that some of these publications are exclusively online or web-based publications. In today’s world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given publication is “major media.” We will not presume that articles posted on the Internet will notably increase the readership of that publication if it is otherwise unknown or distributed nationally.

In light of the above, while the evidence discussed above is relevant as to the significance of the petitioner’s contributions and scholarly articles, it does not meet the plain language requirements for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

Accordingly, the petitioner has not established that she 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.*

Counsel claims the petitioner’s eligibility for this criterion based on being requested to review articles for journals. Counsel submitted:

1. A copy of an email, dated June 30, 2008, from [REDACTED] for Gene Expression Patterns (GEP), requesting the petitioner to review the manuscript, *Dynamic formation of microenvironments at the myotendinous junction correlates with muscle fiber morphogenesis in zebrafish*;
2. A copy of an email, dated July 25, 2008, from [REDACTED] requesting the petitioner to review the manuscript, *Expression Screening and Annotation of a Zebrafish Myoblast cDNA Library*;
3. A copy of an email, dated August 12, 2008, from [REDACTED] of Developmental Biology, requesting the petitioner to review the paper, *Fgf4 is required for left-right patterning of visceral organs in zebrafish*; and
4. A letter, dated March 5, 2009, from [REDACTED] stating:

One of the critical tasks of an Editor of a Professional Journal is to identify expert reviewers and ask them to review these papers. These reviewers are

world expert in their field who need to be able to identify the strength and weaknesses of the submitted manuscripts and put this evaluation in a constructive review. Thus, these reviewers are invariably widely recognized scientists who have made significant contributions to the field. [The petitioner] has received international recognition for her studies of morphogenesis in zebrafish. She was selected as a reviewer for “Gene Expression Patterns” based on the above criteria.

While the documentation submitted by counsel reflects that the petitioner was *requested* to review three manuscripts/papers, counsel failed to submit documentation establishing that the petitioner had actually reviewed these manuscripts/papers at the time of filing. 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 to perform a manuscript review is not tantamount to evidence of one’s participation as a judge of others’ work.

In addition, 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 her 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 her field, such as evidence that she has reviewed an unusually large number of articles, received and completed independent requests for review from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that she meets this criterion.

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

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

Counsel claims the petitioner’s eligibility for this criterion stating:

Among her achievements, [the petitioner] identified a key gene in copper metabolism that is linked to the Menkes disease in humans, which contributed to better understanding of the etiology of the disease and development of treatments for the disease. She also discovered that early defects in gastrulation movements have major impacts on cells’ late development. In addition, she pioneered the use of particle image velocimetry to quantify large-scale tissue deformation. [The petitioner’s] outstanding research has resulted in multiple publications in top journals. Her work has been

widely reported in professional publications and media, and has been frequently cited by other researchers.

In support of these claims, counsel submitted recommendation letters. We cite representative examples here:

[REDACTED] of Genetics, Genomics, and Development of the Department of Molecular and Cell Biology at the University of California, Berkeley, stated:

[The petitioner] innovatively integrated computational modeling into the study of gastrulation movements. Specifically, to gain a quantitative description of the cell movements in the entire embryo, she applied particle image velocimetry (PIV) analyses, a computational approach that had never been employed in vertebrate systems before. Using PIV, [the petitioner] simulated the behaviors of hundreds of embryonic cells during zebrafish gastrulation and identified the regional differences of cell movements in the zebrafish gastrula. She found that such differences were compromised in mutant embryos defective in gastrulation. Her study proved for the first time that PIV is a valid approach for cell movement study in vertebrates. Additionally, [the petitioner] developed a Matlab-based computational model to assess the contribution of different cellular behaviors to tissue movements. She was the first to discover the multiple cell interaction behaviors cooperate to underlie the convergence and extension movements of the mesoderm, and that simultaneously each of these behaviors has distinct contribution to the tissue movements.

[REDACTED] of Anatomy at the University of California, Berkeley, stated:

Using sophisticated zebrafish embryologic techniques, she discovered that cell movements occurring during gastrulation not only function to shape and position the somites, but also have a crucial impact on the development of different somite cell types. She found that in embryos with defective gastrulation movements, the slow muscle precursor cells in the somites are reduced in number and fail to develop into functional muscles. [The petitioner's] work is very important to other developmental biologists as it has addressed a very fundamental question in the field, i.e. the interconnection between gastrulation cell movements that shape the embryo and the tissue-tissue interaction that determines different cell fates.

[REDACTED] stated:

[The petitioner's] seminal research on zebrafish development and genetics has significantly enhanced our understanding of vertebrate and human somite formation. Given that defects in gastrulation movements and somite formation are very common causes of human birth defects, her study thus has important implications for biomedical research.

██████████ stated:

[The petitioner] successfully conducted a genetic screen searching for mutations that affect the development of zebrafish embryo. She identified several novel mutants that my laboratory is currently working on. One of them exhibited defects in many aspects of development, including pigmentation, brain development, and notochord differentiation, and thus name “calamity”. Strikingly, the defects of calamity mutants are almost identical to those seen in zebrafish embryos exposed to chemical agents that disrupt copper metabolism.

██████████ Associate Professor in the Department of Biology at the University of Washington, stated:

Among her major accomplishments, [the petitioner] demonstrated that cellular behaviors involved in zebrafish gastrulation are regulated by an intercellular signaling pathway, known as the non-canonical Wnt signaling pathway. She further discovered that non-canonical Wnt signaling components are localized asymmetrically during zebrafish gastrulation, which provides the first critical evidence that this pathway functions similarly in invertebrates and vertebrates. [The petitioner’s] seminal research on gastrulation has significantly advanced our understanding of this crucial process of vertebrate and human development, and has helped to explain the genetic basis for human birth defects. Moreover, [the petitioner’s] work has important implications for cancer studies.

██████████ Assistant Professor at the University of Maine, stated:

[The petitioner’s] contribution towards understanding vertebrate development and disease is notable in her research on two different but equally fundamental developmental processes: gastrulation and somite formation. Gastrulation is the process through which the body plan is laid out. Disruption of gastrulation leads to multiple human birth defects and is also frequently lethal. The three major vertebrate model systems traditionally used for the study of gastrulation (chicken, mouse, and frog) were informative but inherently limited by the inability to study the movements of cells that actually generate the body plan. [The petitioner] pioneered the use of the zebrafish system to visualize the movements of cells during gastrulation. These studies were exceedingly difficult, but [the petitioner] has streamlined the process and developed new tools for cell-lineage tracing. This technique has been adopted by other scientists in the field – indicating how [the petitioner’s] work significantly impacts the progress of the field.

██████████, Scientist at the Hospital for Sick Children, stated:

Indeed, [the petitioner] has utilized pioneering techniques to actually image the microscopic changes in cell polarity and movement that occur during live embryonic

development. In doing so, she was the first to determine that multiple types of cell intercalation events cooperate to narrow and elongate the embryonic axis at gastrulation (in a process called convergence and extension). [The petitioner] was also the first to integrate computational modeling and particle image velocimetry (PIV) analyses into her study of cell movements during zebrafish gastrulation. She identified regional differences in cell movements over the course of gastrulation, and further demonstrated that the non-canonical Wnt signaling pathway controls these different behaviors.

stated:

More recently, [the petitioner] has been conducting important research on establishing zebrafish as an animal model system to study birth defects and diseases in humans. In one of her studies, she identified a zebrafish mutant carrying mutation in the gene *ATP7A*, a key gene in copper metabolism and is often mutated in human patients with Menkes disease.

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.

In this case, 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 her research and work, they fail to establish that she has made contributions of major significance in her field. In evaluating the reference letters, they do not specifically identify how her contributions have influenced the field; rather, the letters discuss the possible implications that her work may lead to in the future. We will not consider evidence reflecting claims of future speculation. 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.

Letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner’s curriculum vitae and work and provide an opinion based solely on this review. 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).

Counsel also submitted 12 articles which cite to the petitioner’s work:

1. *Cell migration during gastrulation*, Current Opinion in Cell Biology, August 15, 2005;
2. *Precision metal economy*, Cell Metabolism, August 2006;
3. *Cadherin-mediated adhesion regulates posterior body formation*, BMC Developmental Biology, November 28, 2007;
4. *Making Waves in Madison*, Zebrafish, 2004;
5. *BLT-1, a specific inhibitor of the HDL receptor SR-BI, induces a copper-dependent phenotype during zebrafish development*, Toxicology Letters, August 22, 2007;
6. *Interaction of Wnt and caudal-related genes in zebrafish posterior body formation*, Developmental Biology, January 13, 2005
7. *Zebrafish (Danio rerio) as a model for studying the genetic basis of copper toxicity, deficiency, and metabolism*, The American Journal of Clinical Nutrition, September 2008;
8. *Noncanonical Wnt/PCP Signaling During Vertebrate Gastrulation*, Zebrafish, March 6, 2009;
9. *New Roles for Copper Metabolism in Cell Proliferation, Signaling, and Disease*, Journal of Biological Chemistry, January 9, 2009;
10. *Morphogenetic Cell Movements: Diversity from Modular Mechanical Properties*, Science, December 5, 2008;
11. *Regulated adhesion as a driving force of gastrulation movements*, Development, October 24, 2008; and
12. *Planar Cell Polarity Signaling: From Fly Development to Human Disease*, Annual Review of Genetics, December 2008.

Regarding items 7 – 12 above, the articles were published after the petition was filed. The petition was filed on August 25, 2008. Since these articles were published after the filing of the petition, we

will not consider the 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. at 49.

Counsel also submitted documentation from the website, ISI Web of Knowledge, reflecting the number of times the petitioner's articles were cited in other articles. We note that counsel submitted information from ISI Web of Knowledge at the time the petition was filed and in response to the director's request for evidence. We further note that when comparing both submissions, the number of citations differ because the petitioner's work was cited in articles after the petition was filed. In addition, counsel submitted a "Citation Summary" reflecting that four of the petitioner's articles (two of the petitioner's articles have no evidence of citation) were cited a total of 66 times in the aggregate, which was derived from the first submission of ISI Web of Knowledge. We are not persuaded by counsel's argument that the petitioner's citations (66 from the "Citation Summary" and 6 articles prior to the filing of the petition) reflect that the petitioner's research was of major significance to her field.

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. *See also Kazarian v. USCIS*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of *major significance*).

Finally, while counsel also cites to the petitioner's work in "professional publications and media" and "recipient of several major awards for her excellence in research," these factors have already been considered under 8 C.F.R. §§ 204.5(h)(3)(i) and (iii). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for prizes and published material about the alien, USCIS clearly does not view these criteria as being interchangeable.

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, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field beyond the limited projects on which she has worked. While the evidence demonstrates that the petitioner is a talented researcher with potential and has a moderate citation record, it falls short of establishing that the petitioner had already made contributions of major significance.

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

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

Counsel claims the petitioner's eligibility for this criterion based on the following articles:

1. *Cooperation of Polarized Cell Intercalation Drives Convergence and Extension of Presomitic Mesoderm During Zebrafish Gastrulation*, The Journal of Cell Biology, January 14, 2008;
2. *Convergence and Extension Movements Affect Dynamic Notochord-Somite Interactions Essential for Zebrafish Slow Muscle Morphogenesis*, Developmental Dynamics, September 7, 2007;
3. *Convergence and Extension Movements Mediate the Specification and Fate Maintenance of Zebrafish Slow Muscle Precursors*, Developmental Biology, December 19, 2006;
4. *Atp7a Determines a Hierarchy of Copper Metabolism Essential for Notochord Development*, Cell Metabolism, August 2006;
5. *Essential Roles of Ga 12/13 Signaling in Distinct Cell Behaviors Driving Zebrafish Convergence and Extension Gastrulation Movements*, The Journal of Cell Biology, June 6, 2005;
6. *No Tail Co-Operates with Non-Canonical Wnt Signaling to Regulate Posterior Body Morphogenesis in Zebrafish*, Development, 2004; and
7. *Genetic Diversity in Natural Populations of Glycine Tabacina in Fujian, China*, Journal of Genetics and Molecular Biology, 2003.

A review of these articles reflects that the petitioner co-authored them while she was a doctoral researcher at Vanderbilt University and postdoctoral researcher at the University of California, San Francisco. In addition, the Department of Labor's Occupational Outlook Handbook<sup>5</sup> (OOH) provides that 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

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<sup>5</sup> See <http://www.bls.gov/oco/ocos047.htm#training>, accessed on December 29, 2009, and incorporated into the record of proceeding.

a permanent job in the petitioner's field, published research alone cannot serve to set the petitioner apart from others in her 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 four articles that cite to the petitioner's work, while these moderate citations demonstrate some mild interest in her published articles, they are not sufficient to demonstrate that his articles have attracted a wide level of interest in her field commensurate with sustained national or international acclaim.

Accordingly, the petitioner has not established that she 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. The petitioner, a postdoctoral fellow, relies on her moderate number of publications and presentations, moderate citation record, the praise of her peers, and her affiliation with the University of California, San Francisco and distinguished researchers. While the petitioner's accomplishments may distinguish her from other postdoctoral fellows and research associates, we will not narrow her field to others with her level of training and experience. For example, ██████████ claimed to have received numerous international awards, such as the Edouard Van Beneden Prize from the Royal Academy of Belgium Victor Noury Grand Prize from the French Academy of Sciences, and Harland Winfield Mossman Award in Developmental Biology from the American Association of Anatomists. ██████████ also claimed to have authored over 100 articles, has served as editor of a number of journals and is currently a member of an editorial board. In addition, ██████████ claimed to have served on the review panel of National Science Foundation (NSF) and guest editor for PLoS Genetics. Further, ██████████ claimed to serve on the editorial board of Developmental Dynamics and Mechanisms of Development. Moreover, ██████████ claimed to be an associate editor of Developmental Dynamics and served on editorial boards of Current Biology and Developmental Cell and reviewer for NSF. ██████████ directs a laboratory, has received numerous awards, and is a member of the National Academy of Sciences. When compared to the accomplishments of these individuals, it appears that the highest level of the petitioner's field is far above the level she has attained.

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a postdoctoral fellow, but is not persuasive that the petitioner's achievements

set her significantly above almost all others in her 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.

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.