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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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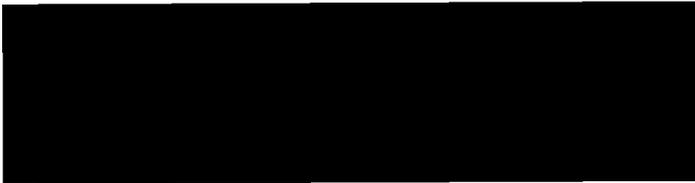
FILE: [Redacted] SRC 08 265 51319

Office: TEXAS SERVICE CENTER Date: MAR 09 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hospital. It seeks to classify the beneficiary 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 the petitioner had not established that the beneficiary has earned 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 beneficiary's 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, counsel argues that the beneficiary 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on September 4, 2008, seeks to classify the beneficiary as an alien with extraordinary ability in the field of neurosurgical oncology. At the time of filing, the beneficiary was working as the [REDACTED] and as an [REDACTED].

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 the beneficiary's 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 beneficiary 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

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

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a May 1, 2006 certificate from the Congress of Neurological Surgeons (CNS) as evidence of the beneficiary's membership in the congress. The petitioner also submitted information from the CNS internet site stating:

An applicant for Active Membership in the Congress of Neurological Surgeons (CNS) must be a licensed physician whose practice is substantially limited to neurological surgery. Further, an applicant for Active Membership must:

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

1. be certified by the American Board of Neurological Surgery, The Royal College of Physicians and Surgeons of Canada, or the equivalent; or
2. have completed the residency training requirements of a program approved by the American Board of Neurological Surgery; or
3. have acceptable academic training equivalent to the requirements for eligibility for examination by the American Board of Neurological Surgery; or
4. have an outstanding record in the field of neurological surgery over a period of years, due to the high standard of quality of the applicant's work; and be a member in good standing in the applicant's local or regional medical society, or provide equivalent documentation of good standing in the local medical community. Applicants who are active duty officers in the Armed Forces are exempt from this requirement; and have a record consistent with the highest standards of the profession.

We cannot conclude that being a licensed physician, being certified by the American Board of Neurological Surgery (ABNS), having completed the residency training requirements of a program approved by the ABNS, or having acceptable academic training equate to outstanding achievements. Further, with regard to item 4 above, the documentation submitted by the petitioner does not specify what type of achievements constitute an "outstanding record" or "high standard of quality of . . . work." Nevertheless, item 4 is not required if the applicant fulfills requirements 1, 2, or 3. Moreover, there is no evidence showing that prospective CNS members are evaluated by recognized national or international experts in the beneficiary's field or an allied one.

The petitioner submitted a September 2004 certificate from the American Association of Neurological Surgeons and the CNS stating that the beneficiary was a "Resident Member" of the Section on Tumors. The record, however, does not include evidence of the membership requirements (such as bylaws or rules of admission) for the Section on Tumors' "Resident Member" designation. There is no evidence showing that this membership designation requires outstanding achievements as judged by recognized national or international experts in the beneficiary's field or an allied one.

The petitioner submitted a July 9, 2007 certificate and welcome letter from [REDACTED] President of the Society for Neuro-Oncology (SNO), as evidence of the beneficiary's membership in the society. [REDACTED] letter states:

Criteria for active membership, as stated in our Bylaws, include the following:

An applicant for Active Membership in the SNO must hold a doctoral degree and have an interest and/or family practice which includes neuron-oncology. Furthermore, an applicant for Active Membership must (1) be a member in good standing in one or more of the applicant's appropriate, respective professional societies; (2) have a record consistent with the highest ethical, medical and scientific standards of his or her profession; (3) have an advanced educational degree consisting

of M.D., D.O., Ph.D. or equivalent alone or in combination; (4) have a demonstrated and recognized commitment to the field.

We cannot conclude that holding a doctoral degree; having an interest and/or family practice which includes neuro-oncology; being a member in good standing in at least one appropriate professional society; having a record consistent with the highest ethical, medical and scientific standards of one's profession; having an advanced educational degree consisting of M.D., D.O., Ph.D. or their equivalent; and having a demonstrated and recognized commitment to the field equate to outstanding achievements. Further, [REDACTED] letter does not define what constitutes "a record consistent with the highest ethical, medical and scientific standards of [one's] profession." For instance, no specific examples of ethical, medical or scientific standards are identified. Moreover, there is no evidence showing that prospective members in the SNO are evaluated by recognized national or international experts in the beneficiary's field or an allied one.

In light of the above, the petitioner has not established that the beneficiary 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.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary 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.²

The petitioner submitted 2006 and 2007 articles in *Baystate Health* and *AlphaSites* (both Baystate Medical Center marketing publications) that quote the beneficiary or discuss his work. There is no evidence (such as national circulation statistics) showing that these marketing publications qualify as professional or major trade publications or some other form of major media. The petitioner also submitted marketing materials for Baystate Neurosurgery and the Baystate Regional Cancer Program. The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The marketing materials from Baystate Neurosurgery and the Baystate Regional Cancer Program do not meet these requirements.

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.

The petitioner submitted a Question and Answer interview of the beneficiary posted in the “Stories/Spotlight” section of the Brain Science Foundation’s internet site.³ The date and author of this material were not provided as required by the plain language of this criterion. Further, there is no evidence showing that this organization’s internet site qualifies as a professional or major trade publication or some other form of major media.

In light of the above, the petitioner has not established that the beneficiary 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.⁴ 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 submitted a July 17, 2007 contract the beneficiary executed with Current Medicine Group LLC stating:

As per this contract, you agree to the following terms.

1. You consent to serve as the Associate Editor (“AE”) of the following collection:

- Neuro-oncology

2. You agree to review all of the content in your assigned collections, which currently consists of 300 images.

3. As an Associate Editor, you agree to maintain and develop the above listed collection(s). To do so, you will accept the following responsibilities:

³ The record reflects that the petitioner was a Clinical Fellow of Neurosurgical Oncology at [REDACTED]. According to the Brain Science Foundation’s internet site, the foundation partners with the Department of Neurosurgery at the [REDACTED] to facilitate progress in brain cancer research. See http://www.brainsciencefoundation.org/matriarch/MultiPiecePage.asp_Q_PageID_E_21_A_PageName_E_AboutCenter, accessed on February 18, 2010, copy incorporated into the record of proceeding.

⁴ 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).

- To review the images in your assigned collection(s) while considering if 1) the images contained within reflect up to date, relevant information, 2) the images are located in the proper collection and section, and 3) the images are classified correctly.
- You will suggest the removal of images and tables that are no longer of interest. You will also notify Current Medicine Group if any of the images/tables should be relocated to another collection/section. You agree to submit a maintenance report to Current Medicine Group outlining images/tables that should be removed or relocated by August 1, 2007.
- You will be required to add artwork that will either replace outdated images or fill a current void within our collections. You agree to begin contributing new materials by September 1, 2007.

You will continue to develop your collections through the following capacities:

- Recommend outside sources for images (other than those published by Current Medicine Group)
 - Submit your own original images/tables or ones created by your colleagues
 - Update/Edit images removed from images.MD so they contain current material where possible
- You agree to review images, published in *Current Reports* or *Current Treatment Options* journals related to your collections, for inclusion in any of your assigned images.MD collections. You will advise us in which collections/sections published images should be placed.

4. Current Medicine Group LLC prohibits the inclusion of industry slides and promotional materials that have been prepared by pharmaceutical companies. As Associate Editor, you agree to develop your collection comprehensively and will not slant the material contained within to reflect any personal or professional conflict of interests.

5. Current Medicine Group LLC by means of this contract agrees to share copyright with creator of all images contributed to images.MD and, hereby, grants permission for the unlimited use of such images.

6. For your time and assistance, an honorarium of \$500 will be paid at the end of the fiscal year.

The petitioner also submitted a May 15, 2008 printout from Current Medicine Group LLC's internet site stating: "Our newest product, images.MD, an online encyclopedia of over 70,000 medical images,

is collected from over 100 of our most popular titles with contributions from more than 2,000 medical professionals.”

There is no evidence from [REDACTED] confirming that the beneficiary complied with the terms set forth in the preceding contract or identifying his completed work. Accordingly, the beneficiary’s participation as a reviewer of image content for images.MD has not been established. Nevertheless, the petitioner has not demonstrated that the beneficiary’s review, maintenance, and development of image content for his assigned Images.MD collection equates to his “participation, either individually or on a panel, as a judge of the work of others” in his field or an allied one. Moreover, there is no evidence demonstrating that serving as an Associate Editor for the images.MD online Neuro-oncology collection is commensurate with sustained national or international acclaim at the very top of his field. For instance, aside from the self-serving information submitted from Current Medicine Group LLC’s own internet site, there is no evidence indicating that the company’s “newest product,” the images.MD online encyclopedia, has a distinguished reputation when compared to other forms of medical literature.

The petitioner submitted a December 8, 2006 e-mail from the Behavioral Health Director at [REDACTED] to the beneficiary inviting him to participate as a member of the Steering Committee to develop “a strategic plan for neurosciences.” The e-mail requests the beneficiary’s “input, feedback and participation regarding . . . future vision and plans, and in particular how neurosurgery will play a critical role in these plans.” The plain language of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” An invitation expressing “hope” that the beneficiary will be able to join the committee is not tantamount to evidence of his “participation.” Moreover, the petitioner has not established that the beneficiary’s service on a Baystate Health Steering Committee to develop a strategic plan for neurosciences equates to his “participation, either individually or on a panel, as a judge of the work of others” in his field or an allied one. Such work appears inherent to the beneficiary’s position as Director of [REDACTED] and does not demonstrate acclaim beyond his immediate employer. For instance, internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *See, e.g., Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009).

The petitioner submitted a November 26, 2004 letter from [REDACTED] at Brigham and Women’s Hospital, Professor of Neurosurgery at Harvard Medical School, and Chairman of the Editorial Board of *Neurosurgery*,⁵ stating:

[The beneficiary] was selected . . . for a coveted fellowship in brain tumor surgery at Brigham and Women’s Hospital, affiliated with [REDACTED]. Since he joined us in July of 2003, he has continued to distinguish himself from other neurosurgeons in the field.

* * *

⁵ We note that the beneficiary trained under [REDACTED] and coauthored an article and book chapters with him during the beneficiary’s fellowship in brain tumor surgery at [REDACTED]

[The beneficiary] has performed peer review on the subject of Neurosurgical Oncology for the journal *Neurosurgery* I am Chairman of the Editorial Board for this journal, and can certify that [the beneficiary's] contributions as a reviewer have been indispensable to our publication.

letter does not specify the Neurosurgical Oncology material reviewed by the beneficiary or the nature of his contributions. For example, letter does not specifically identify the manuscripts reviewed by the beneficiary and his dates of participation. Further, there is no information regarding the means by which the beneficiary was selected to review material for *Neurosurgery*. It is certainly reasonable to conclude that the beneficiary was selected because his supervisor at the time, , happened to serve in an editorial capacity for the journal. Moreover, peer review is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the beneficiary apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of reputable journals or medical conferences, or served in an editorial position for a distinguished journal in the same manner as Dr. Black (for example), we cannot conclude that the beneficiary 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 discussing the beneficiary's work. We cite representative examples here. In evaluating the reference letters, we note that letters containing mere assertions regarding the beneficiary's talent and skill in performing various surgical techniques are less persuasive than letters that specifically identify his original contributions and provide specific examples of how those contributions have influenced the field. For example, many of the individuals offering letters of support focus on the beneficiary's educational qualifications and training, his experience and ability in performing highly specialized neurosurgical procedures, the general importance of his specialty, and his teaching skills, rather than how work primarily attributable to him equates to original scientific contributions of major significance in his field. Vague, solicited letters from local colleagues or letters that do not specifically identify original contributions or how those contributions have influenced the field are insufficient. *See Kazarian v. USCIS*, 580 F.3d at 1036.

and Principal Investigator of the Golby Laboratory
for

Because of his rare knowledge and unique abilities, [the beneficiary] has been involved with major companies including InSightec and GE Healthcare Technologies to help develop the next generation of machines and techniques for use in minimally invasive and maximally effective brain tumor surgery. With InSightec, he has been a key participant in the development of a High-Intensity Focused Ultrasound System for treating tumors, and with GE he was involved in developing an advanced intraoperative MRI system for use in image-guided neurosurgery. Much of this work was performed in collaboration with MIT engineers and General Electric (GE) at a joint facility known as the Center for Integration of Medicine and Innovative Technology (CIMIT) for a project dubbed “Operating Room of the Future” (ORF). His contributions are integral in configuring the operating room of the future.

The record, however, does not establish that the beneficiary initially invented or holds a patent for the InSightec High-Intensity Focused Ultrasound System or GE’s advanced intraoperative MRI system. Further, there is no evidence from these companies describing the extent of beneficiary’s participation in their projects or the impact these systems have had in the surgical field.

further states:

[The beneficiary] has pioneered the use and research of new methods to manage certain brain tumors, such as the novel technique of infusing therapeutic drugs into the brain after tumor removal to fight off tumor recurrence. [The beneficiary] has authored a number of scientific papers, and published in the leading neurosurgery journal *Neurosurgical Clinics of North America*. [The beneficiary] has also written two neurosurgical textbook chapters:

states that the beneficiary has pioneered the use and research of a “novel technique of infusing therapeutic drugs into the brain after tumor removal to fight off tumor recurrence,” but she does not provide any specific examples of how the beneficiary’s technique is impacting the field. With regard to the beneficiary’s published work as discussed by and others, we note that the regulations contain a separate criterion regarding the authorship of scholarly 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 beneficiary 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 beneficiary meet at least three separate criteria. We will fully address the beneficiary’s published work under the next criterion.

of Medical Neuro-Oncology, and Professor of Oncology and Neurosurgery at the Huntsman Cancer Institute, states that he and the beneficiary are a part of a consortium formed to “facilitate innovative clinical trials and cutting edge research in the treatment of brain tumors.” further states:

[The beneficiary's] record of publications is very impressive and includes review articles, original research papers, and book chapters. For example, his first-author article, "A low-field intraoperative MRI system for glioma surgery: is it worthwhile?" was recently accepted for publication in the top tier journal *Neurosurgery Clinics of North America*, and has received numerous citations and recognition in the field. In the article, he explains how intra-operative MRI allows for the precise localization of brain tumors and the clear definition of their margins, avoiding the risks and uncertainties of discerning tumor from normal brain during surgery. . . . Not only does this technique, mastered by [the beneficiary], assist the surgeon during the operation, it also prevents postoperative neurological deficits and can lessen recovery time. The more aggressive removal of tumor that this technique allows also improves patient survival following surgery.

While [REDACTED] states that the beneficiary has "mastered" the technique of using intra-operative MRI for brain tumor removal, there is no evidence showing that the beneficiary was the original pioneer of this surgical technology. In fact, the beneficiary's article in *Neurosurgery Clinics of North America*, which he co-wrote with [REDACTED], states: "A decade ago, intraoperative MRI was regarded as a novelty and somewhat of a luxury. In the past few years, it has steadily moved toward becoming a standard practice in the surgery of critical areas of the brain."

[REDACTED], states that the beneficiary has collaborated with Kyphon (a company "recently acquired by Medtronic") by providing feedback on its products and by teaching other surgeons how to use Kyphon's products. [REDACTED] states:

One of our major products, X-STOP®, is a metal implant that is inserted between the vertebrae in the lower spine to alleviate pressure and any pinched nerves caused by lumbar spinal stenosis. X-STOP® is revolutionary because unlike other products with similar functions, it can be inserted into the spine through only a small incision in the lower back, without general anesthesia, and no drilling into the bone is required to hold the device in place.

Because [the beneficiary's] successful use of X-STOP® in his patients with lumbar spinal stenosis is so high, we have invited him to become a member of our faculty, and teach other neurosurgeons the procedure. We have also tapped [the beneficiary] as a research and development resource . . . in order to help advance the design and use of XSTOP® to make it even more effective.

While the beneficiary has provided his services to Kyphon, there is no evidence demonstrating that he was the original inventor of any of their products or that his work equates to contributions of major significance in the surgical field.

[REDACTED] of Neurosurgery at Hartford Hospital and Connecticut Children's Medical Center, and Full Clinical Professor of Neurosurgery at Tufts University School of Medicine, states:

The reason why [the beneficiary] is such an important asset to the neurosurgical community is that he combines knowledge of the most advanced neurosurgical techniques with exceptional skill in utilizing and teaching such techniques. . . . [The beneficiary] completed the Brainlab Academy Stereotactic Radiotherapy Course in [REDACTED] to become certified in stereotactic radiosurgery and is largely responsible for the success of the program at Baystate.

* * *

[The beneficiary] is . . . pioneering minimally invasive neurosurgical techniques such as minicraniotomies, neuroendoscopy and intraoperative image guidance. Minicraniotomies or keyhole craniotomies allow surgeons to operate on tumors that are significantly larger than the incision. Despite the hesitation of many surgeons in reducing their workspace, the advantages to the patient cannot be denied: less swelling and blood loss, less damage to healthy brain tissue, fewer instances of infection and smaller scars. Through the use of multidimensional imaging, [the beneficiary] is able to perform minicraniotomies with a comprehensive picture of the brain identical to that available to other surgeons who perform full-scale craniotomies with much larger incisions.

[REDACTED] letter states that the beneficiary is pioneering minimally invasive neurosurgical techniques such as minicraniotomies, neuroendoscopy and intraoperative image guidance, but there is no evidence showing that the beneficiary was the original inventor of these techniques. Moreover, [REDACTED] letter does not provide any specific examples of how the beneficiary's particular techniques have impacted others in his field.

[REDACTED] further states: "[The beneficiary] has also lent his expertise outside of the operating room through his authorship of book chapters and journal articles. . . . His 2005 journal article published in *Neurosurgical Clinics of North America* was cited several times by others in the field." With regard to the beneficiary's publications, [REDACTED] and [REDACTED] letters note that the beneficiary's work has been cited by others in his field. The petitioner's appellate submission includes Google Scholar search results reflecting less than ten cites to the beneficiary's work. While the citation evidence submitted by the petitioner demonstrates some outside interest in the beneficiary's work, the petitioner has not shown that nine citations is an indication that the beneficiary's 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).

[REDACTED], Australian Neurosurgeon at the Royal Melbourne Hospital, and Senior Lecturer in the Department of Surgery, [REDACTED] states:

I am familiar with [the beneficiary's] exceptional work in Boston and we have collaborated on research projects by telephone and e-mail.

* * *

One of the most revolutionary innovations in surgery for glioma over the past decade is the intraoperative MRI scanner. [The beneficiary] has worked extensively with this remarkable technology, as have I. He is one of the few individuals in neurosurgery who have such an experience. The technique involves operating on a patient's brain within a specially designed MRI scanner, so images can be taken constantly during the actual surgery.

* * *

[The beneficiary] has many talents and achievements, but none as outstanding as the intraoperative MRI-guided brain tumour surgery described above. This neurosurgical service is currently available in only a few centers in the world. However, given its great advantages, it is likely to be adopted in many more centers at the cutting-edge of brain tumour surgery.

The letter from [redacted] states that the beneficiary has worked extensively with the intraoperative MRI scanner, but notes that this innovation for glioma surgery has been in existence for a decade. While the beneficiary has experience with this technology that is "available in only a few centers in the world," there is no evidence showing that he was the original inventor of the innovation.

[redacted] of Neuroradiology at the Center of [redacted] states:

[The beneficiary] is highly respected by his colleagues and is recognized for his innovative work in image-guided brain tumor surgery. This includes the use of the revolutionary intraoperative MRI that enables the surgeon to have instant feedback on the location of tumor remnants and the position of critical areas of the brain. The technique results in a more complete removal of tumor tissue while maintaining utmost safety for the patient in terms of avoiding surgical complications. [The beneficiary] is among the few neurosurgeons who have extensive experience in this rare capacity.

[redacted] letter notes that the beneficiary possesses skills and experience that are rare in the United States. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

While the beneficiary's neurosurgical oncology 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. 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 beneficiary performed admirably on the projects to which he was assigned (such as those supervised by [REDACTED] at [REDACTED], the submitted documentation does not establish that the beneficiary has 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 submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the majority of the letters submitted are from those with whom the beneficiary has collaborated. While such letters are important in providing details about the beneficiary’s role in various projects, they cannot by themselves establish his acclaim beyond his immediate circle of professional contacts. 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 writers’ statements and how they became aware of the beneficiary’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 a neurosurgeon who has sustained national or international acclaim. Without evidence showing that the beneficiary’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of 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.

As previously discussed, the petitioner submitted evidence of the beneficiary’s co-authorship of an article with [REDACTED] in *Neurosurgery Clinics of North America*. The petitioner also submitted evidence showing that the beneficiary coauthored book chapters with [REDACTED] in [REDACTED]

We note that [REDACTED], the beneficiary’s superior at [REDACTED] was the editor of both [REDACTED]. On appeal, counsel states: “[A]s [the beneficiary] is a full-time practicing physician, we believe it is of particular note that he has been sought out to author medical textbook chapters and review articles despite the fact that he is a clinician rather than an academic.” We do not find it unusual for a research fellow to author scholarly material in conjunction with his research supervisor. Moreover, there is no evidence showing that the beneficiary was “a full-time practicing physician” when he coauthored the preceding material as claimed by counsel. The record reflects that the preceding journal article and book chapters were coauthored with [REDACTED] while the beneficiary was training as a [REDACTED]. We note that the Question and Answer interview of the [REDACTED]

beneficiary posted in the “Stories/Spotlight” section of the Brain Science Foundation’s internet site states:

[The beneficiary] is currently the Brain Tumor [REDACTED] and [REDACTED]. . . . His research interests include neurosurgical management of meningiomas and gliomas

* * *

Since [REDACTED] is one of the top surgeons . . . in our field, I have known about him and his work for a long time. I found the Brigham and the Fellowship funded by BSF [Brain Science Foundation] . . .

* * *

I have been studying neurosurgery for seven years, and became interested in brain tumors . . . I decided to pursue further work and training in this . . . subspecialty.

* * *

My work is divided into clinical and research. . . . In research, I am writing a book chapter on meningiomas for a publication [REDACTED] is writing and spend time testing other medical technologies such as the Intraoperative MRI.

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 beneficiary’s published work in instances where publication is routine or expected. *See Kazarian v. USCIS*, 580 F.3d at 1036. As authoring scholarly articles is inherent to research in a university setting (in conjunction with a fellowship or professorship),⁶ we will evaluate a citation history or other evidence of the impact of the beneficiary’s articles when determining their significance to the field. For example, numerous independent citations for an article authored by the beneficiary would provide solid evidence that

⁶ For instance, we note that the beneficiary currently serves as Assistant Clinical [REDACTED] and that his published work was authored while he was training at a hospital affiliated with Harvard Medical School. With regard to research in a university setting, the Department of Labor’s Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on February 15, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor’s research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS’ position that publication of scholarly articles is not automatically evidence of sustained national or international acclaim; we must consider the field’s reaction to those articles.

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 beneficiary may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted evidence showing that the beneficiary's article with [REDACTED] has been independently cited less than ten times. While these citations demonstrate some interest in one of the beneficiary's articles, they are not sufficient to demonstrate that his body of published work has attracted a level of interest in his field commensurate with sustained national or international acclaim. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner submitted evidence showing that the beneficiary is the Director [REDACTED]. The petitioner also submitted evidence showing that this institution has a distinguished reputation. Accordingly, the petitioner has established that the beneficiary meets this single criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a July 20, 2007 letter from Baystate Medical Center stating that the beneficiary's "annual compensation for 2007 is \$450,000." The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that the beneficiary's compensation was significantly high in relation to other neurosurgeons. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate the beneficiary's 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 beneficiary 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).

While USCIS has approved a prior O-1 nonimmigrant visa petition filed on behalf of the beneficiary, 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 beneficiary 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 beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.