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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

B₂

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 18 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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

S Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. As of the date of filing, the petitioner was working under a postdoctoral appointment, an inherently entry-level position that precedes a postsecondary faculty appointment. *See* <http://www.bls.gov/oco/ocos066.htm#training> (accessed October 7, 2010 and incorporated into the record of proceeding).

The petitioner is the beneficiary of an approved employment-based visa petition pursuant to section 203(b)(2)(B) of the Act, which also waived the alien employment certification process in the national interest. As with any petition, the issue is not whether the petitioner qualifies for any employment-based classification, but whether the petitioner qualifies for the classification sought in this proceeding.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director’s ultimate finding that the petitioner has not established his eligibility for the exclusive classifications sought.

I. Law

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or

international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

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

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

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

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

- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria²

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

The petitioner submitted a certificate from the Society of Optical Instrumentation Engineers (SPIE) in confirmation of a SPIE Educational Scholarship in Optical Science and Engineering in recognition of the petitioner's "potential long-range contributions to the field of optics, photonics, and related disciplines." (Emphasis added.) Counsel initially asserted that SPIE awards the scholarships "in a competitive process from applicants worldwide" and concluded that the scholarship "is an internationally recognized award for excellence in the field of optics and photonics, or a related discipline." Counsel reiterates this assertion on appeal, stating that the regulation at 8 C.F.R. § 204.5(h)(3)(i) "does not automatically exclude educational level awards." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that qualifying prizes and awards be nationally or internationally recognized and that they be in recognition of excellence "in the field of endeavor" rather than of academic accomplishments. Academic achievements are not evidence of accomplishments in a field of endeavor. See generally *New York State Dep't of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r. 1998).

The petitioner's supervisor at The Pennsylvania State University, ██████████ asserts that the scholarship "is one of the most prestigious internationally recognized awards in optics science. Recipients are selected world-wide based on their research records, leadership and their potential for long-range contribution to optics and photonics." ██████████ an associate professor of physics and engineering at Tufts University and one of ██████████ collaborators, asserts that the scholarship "is an international award in optics and photonics research."

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.³

While we do not question the sincerity of [REDACTED] and [REDACTED] and their expertise in the field in general, the record contains no evidence to support their assertion that a scholarship based on potential contributions to the field is an internationally recognized prize or award for excellence in the field rather than support for future education based on past scholarship. For example, the petitioner did not submit official materials from SPIE providing the requirements for the scholarship, the selection process and the number of students who receive such a scholarship annually or coverage of the selection of the scholarships in professional or trade media or a significant general media publication.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of prizes and awards in the plural, consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. While [REDACTED] a professor at The Pennsylvania State University, asserts that the petitioner won another scholarship in 2001 at Nankai University and an Outstanding Doctoral Research Award in Electrical Engineering from The Pennsylvania State University, those awards are not in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. The record also lacks evidence that either award is a nationally or internationally recognized prize or award for excellence in the field of endeavor.

As the petitioner has not submitted corroborating evidence confirming that the SPIE scholarship based on "potential" contributions is a lesser nationally or internationally recognized prize or award for excellence in the field and because the petitioner did not submit evidence of any other prize or award, the petitioner has not submitted qualifying evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(i).

³ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y. 1997).

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.

On appeal, counsel does not contest the director's conclusion that the petitioner had not established that his membership in SPIE is qualifying. As the record contains no evidence that SPIE requires outstanding achievements of its members, we concur with the director that the petitioner has not submitted qualifying evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(ii).

Published materials 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.

The petitioner submitted a June 2005 press release from the State University of Pennsylvania reporting on recent work by [REDACTED]. The petitioner is named as one of [REDACTED] graduate students who coauthored the article reporting this work. The press release was reproduced verbatim on three science websites listing the source as the State University of Pennsylvania and no specific author. Significantly, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the author of the published material, revealing that the identity of the author is relevant.

The director concluded that the websites were not professional or major trade journals or other major media and counsel challenges that conclusion on appeal. Regardless of whether these websites constitute major media, however, the materials are not "about" the petitioner relating to his work as required under 8 C.F.R. § 204.5(h)(3)(iii). Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material relating to the alien's work).

As the only published material submitted is not "about" the petitioner relating to his work, but rather is about a project on which he worked, the petitioner has not submitted qualifying evidence that meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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 petitioner submitted an October 2008 invitation to review a manuscript for the *Journal of Quantum Electronics* and April 2009 invitations to review manuscripts for *Applied Optics* and the *Journal of Physics D: Applied Physics*. The petitioner did not submit any evidence that he actually completed these reviews. The petitioner also submitted an invitation to serve as a "presider" at a CLEO/IQEC session on June 4, 2009. While the petitioner accepted the invitation prior to the date of filing, the actual session was to occur after the date of filing, May 14, 2009. While the materials indicate that the petitioner would manage the session, the record contains no evidence that he would be judging the work of the participants.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence of the petitioner's "participation" in judging the work of others. A mere invitation to do so does not constitute qualifying evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(iv). In addition, as stated above, there is no evidence that the petitioner's duties as a "presider" involved judging the work of others. Regardless, the petitioner did not serve as a "presider" until after the date of filing. Thus, those duties cannot serve as evidence of the petitioner's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In light of the above, the petitioner has not submitted qualifying evidence that meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).⁴

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

The petitioner's field, like most science, 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. 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.

The petitioner submitted evidence of several articles and conference presentations. The regulations contain a separate regulatory class of evidence regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulatory scheme views contributions as a separate evidentiary requirement from scholarly articles. This interpretation is also consistent with the statutory requirement for "extensive evidence." Section 203(b)(1)(A)(i) of the Act.

The letter offering the petitioner a one-year reappointment of his postdoctoral position specifies that the petitioner will conduct independent research under the director of [REDACTED] and contribute to technical publications and proposals. As the conduct of research and authorship of articles is part of the job description for a postdoctoral appointment, an entry-level position that precedes a faculty appointment, see <http://www.bls.gov/oco/ocos066.htm#training>, it cannot be argued that every research project and published article is a contribution of "major significance" in the field.

In light of the fact that scholarly articles are discussed in a separate regulation and that publishing is an inherent part of the petitioner's entry-level job duties, we will not consider the petitioner's publication

⁴ In the interest of thoroughness, however, our final merits determination will consider the petitioner's peer review of manuscripts, assuming he completed those reviews.

record under 8 C.F.R. § 204.5(h)(3)(v) in addition to 8 C.F.R. § 204.5(h)(3)(vi) without additional evidence that his articles constitute contributions of “major significance.”

The petitioner submitted several articles that cite his work. These citations, however, primarily cite the petitioner’s work as one of several examples of other work in the field rather than as an influential breakthrough in the field. For example, a 2006 article in *Optics Express* cites a 2004 article by the petitioner as one of four articles for the proposition that the “ultra-bright, broadband, and spatially coherent supercontinuum (SC) light has already found use in applications such as spectroscopy, confocal microscopy, and optical coherence tomography, to name a few.” A 2008 article in *Optics A: Pure and Applied Optics* cites the petitioner’s 2004 article as one of four articles for the proposition that chromatic dispersion confocal microscopy (CDCM) “has been the object of research in recent years.” A 2008 article in *Physical Review B* cites one of the petitioner’s 2005 articles as one of 13 articles for the proposition that several research groups have developed various highly sensitive optical techniques to overcome the inhomogeneous broadening effects in conventional spectroscopy measurements on composite films.

A 2008 article in the *Journal of the Optical Society of America* by authors at the University of Lyon, however, builds upon the petitioner’s work reported in one of his 2005 articles in *Optical Express*. This citation suggests that the petitioner’s work provided a useful starting point for the French researchers. While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every useful research result utilized by another research group is a contribution of “major significance” as required under 8 C.F.R. § 204.5(h)(3)(v). Overall, the number and character of the citations of the petitioner’s articles are not indicative of a publication record that can be considered a contribution of “major significance” in the petitioner’s field.

As stated above, the petitioner received a 2007 SPIE Educational Scholarship. As discussed above, however, the scholarship was awarded based on “potential” contributions.

The remaining evidence to be considered under this criterion consists of reference letters. [REDACTED] explains that his laboratory was “the first to develop a white light supercontinuum optical tweezers, which can perform broadband optical scattering and coherent anti-Stokes Raman scattering spectroscopy (CARS) at a single particle level.” [REDACTED] speculates that the petitioner’s work “can have far reaching applications, such as in material characterization, biophotonic imaging, chemical sensing, among others.” As examples of this potential impact, [REDACTED] continues:

[The petitioner] developed a new single-particle level coherent anti-Stokes Raman scattering (CARS) spectroscopy technique that can perform broad-band CARS spectroscopy on an optically trapped object by using white-light supercontinuum. Further, he has developed a technique which can significantly improve the sensitivity of

CARDS through suppression of nonresonant four wave mixing background by creatively using time-resolved and polarization-discriminated method. He has also developed a supercontinuum based wavelength division multiplexing (WDM) confocal imaging technique and demonstrated a chromatic two-photon excitation fluorescence imaging method, which can potentially improve the 3d imaging speed greatly and can have significant impact on biophotonic imaging.

While [REDACTED] characterizes this work as “record-breaking” and “outstanding,” he does not provide any examples of how the petitioner’s work is already being used in biophotonic imaging, chemical sensing or other areas. Rather, [REDACTED] concludes that the petitioner’s techniques “can lead to many important applications in nanoscience and engineering as well as ultrasensitive biosensing” and “can potentially result in significant improvement in axial imaging speed and can open new possibilities for studying fast biological processes.”

[REDACTED] a professor at the State University of Pennsylvania, asserts that he knows of the petitioner through his published work. We cannot ignore that the petitioner works in the same department as [REDACTED] [REDACTED] predicts that in “the near future” he will see the “world’s first commercial optical tweezers based on single particle CARS sensing system” which will “create a whole new industry based on the CARDS technology.” [REDACTED] however, does not identify any company developing such a tool based on the petitioner’s work.

According to [REDACTED] the petitioner’s contributions include five optical achievements. [REDACTED] however, does not elaborate on how these contributions are influencing the field.

[REDACTED], another professor at the State University of Pennsylvania, notes that the petitioner has published his work in distinguished journals and asserts that the importance of this work “is reflected in the large amount of citations by other researchers in the optical field that occurred in the last few years.” As discussed above, however, the petitioner’s scholarly articles qualify under a separate regulation, 8 C.F.R. § 204.5(h)(3)(vi), and the petitioner’s citation record does not suggest that his articles also constitute a contribution of “major significance” under 8 C.F.R. § 204.5(h)(3)(v).

The petitioner also submitted letters from three individuals outside of the State University of Pennsylvania. As stated above, [REDACTED] is one of [REDACTED] collaborators. [REDACTED] asserts that one of the petitioner’s “most significant contributions is the demonstration of a supercontinuum optical trapping and spectroscopy system that is able to carry out chemically selective sensing at microscopic scale for the first time.” [REDACTED] notes that this work was published “in the most prestigious optical journals.” As noted above, however, scholarly articles form their own category of evidence under the regulation at 8 C.F.R. § 204.5(h)(3)(vi) and cannot serve as presumptive evidence under this category of evidence absent additional evidence that the reported research constitutes a contribution of “major significance” in the field. [REDACTED] further states that this work was “reported by” two “highly regarded” websites. As discussed above, however, the website postings constitute press releases from the State University of Pennsylvania rather than independent journalistic

coverage. The fact that the State University of Pennsylvania issued a press release reporting research on which the petitioner participated as a graduate student does not establish that the optical sciences community as a whole views the petitioner's work as a contribution of major significance. At issue is whether the petitioner's work has actually had an impact in his field. [REDACTED] concludes:

Specifically, [the petitioner's] exceptional contributions to the field of optical science and technologies have resulted in the invention of ultra-sensitive broad band coherent anti-Stokes Raman scattering (CARS) spectroscopy at single particle level. This invention will result in a substantial advancement for the field of CARS spectroscopy and imaging. The CARS technology is crucial for detection and imaging of DNA, tissues and organs due to its high sensitivity and chemical selectivity.

[REDACTED] conclusion, however, is more speculation as to how the petitioner's work might be used rather than an explanation of how the petitioner's work is already being used.

[REDACTED], a professor at the University of Kansas, explains that he learned of the petitioner's work through his publications. [REDACTED] expresses his belief that the petitioner's "achievement of single-particle-level CARS spectroscopy will bring about a new era of CARS technology." It can be expected, however, that a contribution of major significance will have already brought about a new era of technology. [REDACTED] does not suggest that he has been impacted by the petitioner's research.

Similarly, [REDACTED], an associate professor at the Massachusetts Institute of Technology, provides general praise without providing specific examples of how the petitioner's work is already impacting the field. Once again, [REDACTED] does not suggest that he has personally been influenced by the petitioner's work.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

As stated above, the opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795;

see also Matter of Soffici, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of talent, originality and vague claims of contributions without specifically identifying how those contributions have influenced the field. Merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.⁵ The petitioner submitted three independent letters but these letters do not suggest the authors have applied the petitioner's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meets the requirements in the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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

The petitioner submitted evidence of several scholarly articles that have appeared in professional or major trade publications or other major media. Thus, the petitioner has submitted qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(h)(3)(vi).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

⁵ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

As discussed above, the press releases cannot qualify as published material about the petitioner under 8 C.F.R. § 204.5(h)(3)(iii) as they are not “about” him and do not include an author. Even considering the evidence in our final merits determination, it is not persuasive. Regardless of the reputation of the websites on which the identical press release appeared, it remains that a press release from the petitioner’s own employer that focuses on [REDACTED] and mentions the petitioner only as one of [REDACTED] graduate students is not indicative of or consistent with sustained national or international acclaim.

As stated above, the record reflects that the petitioner was invited to referee articles for three journals. Even if the petitioner did complete those reviews prior to the date of filing despite the lack of evidence that he did so, the nature of the beneficiary’s judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary’s national or international acclaim. *See Kazarian*, 596 F.3d at 1122.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, as noted by the director, peer review is routine in the field; not every peer reviewer enjoys international recognition. On appeal, counsel asserts that this reasoning would lead to the conclusion that a Nobel Prize winner performing reviews is not set apart from his peers. Counsel is not persuasive. In the situation proposed by counsel, it is the Nobel Prize, and not the participation in the widespread review process, that would set the reviewer apart from his peers. We note that a Nobel Laureate, through his receipt of that major internationally recognized prize, meets the one-time achievement requirement at 8 C.F.R. § 204.5(h)(3) and, thus, would not need to provide any other evidence of acclaim. *See H.R. Rep. No. 101-723*, 59 (Sept. 19, 1990).

Without evidence *of judging* that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner’s judging experience, assuming he actually performed those duties prior to the date of filing, is indicative of or consistent with national or international recognition.

As stated above, the press releases are not independent journalistic coverage of the petitioner or his work. Rather, they represent the State University of Pennsylvania’s promotion of the ongoing research at that institution. Such evidence is not indicative of or consistent with the petitioner’s personal national or international acclaim.

As stated above, the petitioner has authored scholarly articles. Pursuant to the reasoning in *Kazarian*, 596 F. 3d at 1122, however, the field’s response to these articles may be and will be considered in our final merits determination. The record contains evidence of no more than 12 citations of any one article. As discussed above, most of these citations merely cite the petitioner’s work as one of several examples of other work being conducted in the field. The record does not establish that the

petitioner's publication record is indicative of or consistent with sustained national or international acclaim in the field.

Ultimately, the evidence in the aggregate 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 associate, relies on his educational scholarship, his volunteer participation in the widespread review process, press releases from his own employer, his publication record, and the praise of his peers. While this may distinguish him from other students and postdoctoral researchers, we will not narrow his field to others with his level of training and experience. [REDACTED] received a CAREER award from the National Science Foundation. [REDACTED] is a "fellow member" of several professional associations. [REDACTED] is an elected fellow of SPIE and the Optical Society of America. [REDACTED] has served as an associate editor for two journals. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an optics researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a postdoctoral associate, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.