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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

B2

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 08 2011

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, with a fee of \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an "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 that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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 argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's decision.

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.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting 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).

Id. at 1119-1120.

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 *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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

According to the petitioner's initial statement, this petition, filed on July 31, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher in the area of synthetic carbohydrate chemistry. The petitioner received his Ph.D. in Environmental Science

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).

from the [REDACTED] Beijing in 2003. At the time of filing, the petitioner was working as a postdoctoral scholar in the [REDACTED]

In July 2008, the petitioner began working at [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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 January 6, 2003 Honor Certificate from the [REDACTED] stating: "Student [the petitioner] receives First Reward of scholarships of 2002." On appeal, the petitioner submits a letter from [REDACTED], stating:

In 2002, [REDACTED] obtained the first class award for outstanding graduate student of the [REDACTED] for his innovative research work. There were more than 300 graduate students in our research institute in year of 2002 and only three of them obtained the first class award, while 15 got the second class of the award, and around 30 obtained the third class award. The award winner received about half a year or three months extra income above their annual stipend. That was the way that we awarded excellence in research to the top 10% in the [REDACTED]

This student award from the [REDACTED] reflects institutional recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. Moreover, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. In this instance, there is no documentary evidence demonstrating that the petitioner's award was recognized beyond his educational institution and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner also submitted a September 2002 "Project approval Notification" from the "Graduate Study Department" of the [REDACTED] stating: "The student [the petitioner] as head of the project who apply for [REDACTED], graduate student science and social practice special funding' (innovation research category) has been approved." In response to the director's request for evidence, the petitioner submitted a list of 42 "graduate students" (including the petitioner) who received this funding grant from the [REDACTED]. On appeal, [REDACTED] states:

[The petitioner], as a [REDACTED] earned an Innovation Fund grant for Ph.D. Candidates from [REDACTED] to design and synthesize environmentally benign pesticide. Each

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

year, only a few of students can have this honor in the [REDACTED]. In the year of 2002, it was even more difficult to be granted. Basically one research institute could only recommend one candidate for evaluation for the grant, while there are more than 100 research institutes in the [REDACTED] around the whole of China. Only 42 persons were awarded this grant.

We note that consideration for this funding grant from the [REDACTED] was limited to Ph.D. students. The submitted documentation reflects that 42 students received this Ph.D. grant and that the petitioner received his [REDACTED] funding "to design and synthesize environmentally benign pesticide." Research grants of this kind simply fund an investigator'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 recognize past excellence in the 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 his burden to establish every element of this criterion. In this case, there is no evidence showing that the petitioner's funding award from the [REDACTED] was recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field. Finally, even if the petitioner were to establish that his student grant from the [REDACTED] equates to a nationally or internationally recognized prize or award for excellence in the field, which he has not, the statute requires the submission of "extensive documentation." Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires the alien's receipt of "nationally or internationally recognized *prizes or awards*" in the plural. [Emphasis added.] A single qualifying award does not meet the plain language requirements of this criterion.

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

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

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

The petitioner submitted his membership card for the [REDACTED], but there is no evidence (such as bylaws or rules of admission) showing that the [REDACTED] requires

outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. Accordingly, the petitioner has not established that he 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 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. 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.³

The petitioner submitted copies of articles citing to his published work. Articles which cite to the petitioner's work are primarily about the author's own work, and are not about the petitioner or even his work. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." The submitted articles do not discuss the merits of the petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other information so as to be considered published material about the petitioner as required by this criterion. Moreover, we note that the submitted articles citing to the petitioner's work similarly referenced numerous other authors. The research articles citing to the petitioner's work are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

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

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

In response to the director's request for evidence, the petitioner submitted a June 2, 2005 e-mail from [REDACTED], to the petitioner and eight of his coworkers stating: "I have decided that we should reinstate the paper review exercise. [REDACTED] is handling the primary review of the paper on your desk. Let's meet on June 10th at 12 pm to go over the paper."⁴ The petitioner also submitted a June 12, 2005 e-mail from [REDACTED] to the petitioner and eight of his coworkers stating: "Here's the review that I submitted

³ 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.

⁴ The record reflects that [REDACTED] is the petitioner's supervisor at UCSD.

with a recommendation that *Chemistry and Biology* was not the right journal for this paper." The limited information provided in the preceding e-mails does not identify the title of the article reviewed by [REDACTED] research team. Further, there is no documentary evidence of the petitioner's specific contribution to the review.

The petitioner's response included additional e-mails from [REDACTED] to the petitioner and eleven of his coworkers dated October 30, 2007; November 21, 2007; and December 13, 2007 relating to manuscripts that [REDACTED] was requested to review. These manuscript reviews from Fall 2007 post-date the petition's July 31, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

Nevertheless, with regard to the preceding e-mails received by the petitioner while working in [REDACTED] laboratory at [REDACTED] there is no documentary evidence demonstrating that the petitioner actually contributed to the preceding manuscript reviews. The plain language of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of a supervisor requesting input from his subordinates. The submitted documentation indicates that the journal's editorial staff requested [REDACTED] to review the manuscripts. [REDACTED] then assigned the duty to the petitioner and many of his coworkers. The record contains no evidence that the petitioner served as part of a formal judging process (such as being specifically designated as a peer reviewer by a journal's editorial staff).

The petitioner's response also included a letter from [REDACTED] stating:

This is to certify that [the petitioner] has positively participated, as a carbohydrate pioneer consultant, to guide a major project – HCV drug development targeting virus entry and releasing in [REDACTED]. As the leader of this project I appreciate very much the expertise and significant contribution from him.

[The petitioner] who has rich experience in [REDACTED] (the best carbohydrate research center in the world), took look at this project and proposed a key suggestion – adding a carbohydrate (Nea) to our compound.

[REDACTED] does not state that the petitioner served as "a judge" either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). In this instance, the petitioner's work as a consultant for [REDACTED] HCV drug development project does not constitute his "participation, either individually or on a panel, as a judge of the work of others" in the field.

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

During his two years at UCSD, [the petitioner's] research has been focused on the synthesis of various carbohydrate derivatives. Specifically he has been pursuing the synthesis of modified disaccharides, molecules that have shown effective inhibition of tumor growth and metastasis. [The petitioner], an outstanding synthetic carbohydrate chemist, was successful in developing a number of effective approaches to these important molecules and their derivatives.

does not provide specific examples of how the approaches developed by the petitioner have influenced others in the field. While the petitioner's work at [redacted] is important to his laboratory, there is no evidence demonstrating that his work with [redacted] and [redacted] is recognized beyond the university such that his work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to a single research institution or employer.

[redacted] worked in the [redacted] 2000 - 2006. [redacted] states:

I am impressed by [the petitioner's] research and his great achievements in the area of carbohydrate based cancer treatment, particularly his paper published in [redacted] *Letters* in 2002. . . . [The petitioner's] study revealed the first synthetic carbohydrate of (1→6)-β-D-linked glucosamine linked glucosamine hexasaccharide as a potential antitumor and immunostimulating agent CTX is a commonly used chemotherapeutic with severe side effects on patients, including weight loss, skin hair loss and inhibition of blood cells production in patients. In [the petitioner's] study, he found that his compound, the (1→6)-β-D-linked glucosamine hexasaccharide, had an anticancer effect comparable to that of CTX but with greatly reduced side effects. His further studies revealed that his compound did not have an inhibitory effect on blood cell production, instead of improving anti-cancer immunity. In addition, an added potential value of the (1→6)-β-D-linked glucosamine hexasaccharide is that the compound could also inhibit tumor growth. Therefore, these studies clearly demonstrated that the (1→6)-β-D-linked glucosamine hexasacchande is a promising antitumor agent.

[redacted] discusses the "promising" nature of the petitioner's work stating that his studies yielded "a *potential* antitumor and immunostimulating agent" [emphasis added]. A petitioner, however, cannot file a petition under this classification based solely on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49. The burden is on the petitioner to establish that his work has already significantly influenced the field as of the petition's filing date. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it had a demonstrable impact on his field. The petitioner has not shown, for instance, how the field has significantly changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research.

[REDACTED] states that he was formerly a postdoctoral researcher at [REDACTED] further states:

I met [the petitioner] in 2007 at the [REDACTED] at San Diego..., where he presented a poster titled as "Synthesis of the acetylated disaccharide mimics for treatment of tumor metastasis." As a senior principle scientist working in to discovery novel anticancer drugs, I was fascinated by his innovative approach to address this difficult problem.

[REDACTED] does not indicate that he has applied the petitioner's findings in his own work. Further, there is no evidence showing that the petitioner's ACS presentation entitled "Synthesis of the acetylated disaccharide mimics for treatment of tumor metastasis" is frequently cited or that his presented findings otherwise constitute original scientific contributions of major significance in the field.

In his initial letter accompanying the petition, [REDACTED] indentifies himself as [REDACTED] in San Diego. [REDACTED] states:

Within the past ten years scientists have come to realize that the carbohydrate molecules that compose the cell wall play a key role in signaling viruses and bacteria that are attempting to enter the cell, and facilitating their becoming connected to receptor sites in the cell wall. [The petitioner] worked for a number of years in this field and wrote a number of fine first-author papers on a new process of synthesizing bioactive oligosaccharides. Some of the compounds he made, β -(1 \rightarrow 6)-glucosamine oligomers, might be used to develop therapies to interrupt the signaling and other intermediate processes that allow dangerous virus vectors from attaching to the cell wall at receptor sites [REDACTED] *Letters*, 2002, 43, 7561-7563, [the petitioner], [REDACTED] 2003, 338, 495-502, [the petitioner] etc.). These designed carbohydrates might prevent these virus vectors from entering the cell and destroying it.

[REDACTED] opines that some of the petitioner's compounds "might be used to develop therapies" and that the carbohydrates he designed "might prevent these virus vectors from entering the cell and destroying it." With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past research achievements already qualify as original contributions of major significance in the field. As previously discussed, a petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] states:

[The petitioner] worked for me for one year as a post-doctoral fellow in my group at the [REDACTED]. He was supported as part of the [REDACTED] Carbohydrate Science, a provincially funded initiative, and worked on a project focused on developing novel vaccines for the treatment of invasive aspergillosis, a fungal lung disease that is nearly always lethal and attacks predominantly the elderly and individuals

with weakened immune system. This is a joint project between my group and that of [redacted], my colleague in the [redacted] [The petitioner], in less than one year, single-handedly synthesized five large oligosaccharides that will be used in the generation of the vaccines. This was an incredible achievement as I had anticipated that it would take him more than two years to complete this task. We are now investigating the potential of these compounds as vaccines and we are waiting on the biological work to be completed before we write up the work for publication, following any necessary patent applications.

[redacted] indicates that his research team is "investigating the potential" of the petitioner's compounds as vaccines and that they are "waiting on the biological work to be completed" before writing up the work for publication. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner's initial evidence included a "Report of Invention" prepared by [redacted] and the petitioner based on their work at the [redacted]. The petitioner also submitted an international patent application filed by [redacted], entitled "Compositions and Methods for Treatment of Disease with Acetylated Disaccharides," but the document does not list the petitioner as an inventor. The petitioner's documentation also included evidence of three Chinese patent applications that he coauthored. Even if the petitioner were to establish that these inventions received a patent, the grant of a patent demonstrates only that an invention is original. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this instance, there is no evidence indicating the extent to which the petitioner's inventions have been licensed or successfully marketed in the industry. Thus, the impact of the petitioner's inventions is not documented in the record.

In his initial letter [redacted] and former [redacted] states:

[The petitioner] began research in my group on March 1, 2003.

* * *

I assigned an extremely difficult research project to [the petitioner], based on my high expectation of his abilities. I was not disappointed.

[The petitioner] has completed within one year the solid-phase synthesis of a collection of 1,171 carbohydrate compounds that are just now undergoing evaluation as potential inhibitors of a cancer-associated enzyme: N-acetylglucosaminyltransferase-V. We hope to get a hit from this testing, which would be a lead compounds [*sic*] for drug-development.

In his letter submitted in response to the director's request for evidence, [redacted] states:

When [the petitioner] joined my group at the [redacted] we were working on a very difficult project that tried to develop a method capable of synthesizing 1000 compounds in one pot using a split, mix and split solid phase synthesis approach. We had started that project 10 years earlier and a lot of excellent organic chemists, biologists and analytical chemists had worked on that project. We had developed a high throughput screening method (FAC/MS, front affinity chromatography coupled with mass spectrometric screening) that would allow us to screen for the biological activity of carbohydrates in mixtures and [the petitioner's] task was to figure out how to make such mixtures. [The petitioner] single-handedly developed a method to prepare up to 1000 compounds in a single mixture, a remarkable feat in itself and discovered the best inhibitor to date of the clinically important enzyme N-Acetylglucosaminyltransferase-V.

The record, however, does not include documentary evidence showing that the petitioner's method for preparing compounds is being widely applied by others in the field or that his work otherwise equates to original contributions of major significance in the field.

[redacted] states:

[The petitioner] is my former graduate student and he has [been] involved in many important projects: 1) Solid-acid catalyzed organic reactions using Montmorillonite clays as green catalyst; 2) Developed a practical method in oligo-GlcNAc synthesis which shows good activity in tumor cell inhibition; 3) Synthesized complex oligosaccharide derivatives related to those from *sanqi*, a chinese herbal medicine from *Panax notoginseng*, presented good immune response in mice test; 4) Design and synthesized glycotransferase inhibitors using parallel and combinatorial synthesis, some of the active new molecules are thus obtained. The knowledge accumulated along years of research by [the petitioner] has been very essential for the comprehension of such glycoscience.

[redacted] does not provide specific examples of how the petitioner's work has impacted others 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.

[redacted] states that he received his Ph.D. from [redacted] further states:

[The petitioner's] contributions regarding bioactive oligosacchararide synthesis and application in the medical field and so on, like α - and β -stereo-selective glycosylations, reported in *Carbohydrate Research* 337 (2002) 485-491, 1165-1169, 1673-1678 etc. are quite significant and impressive. He established several concise and practical glycosylations methods for the synthesis of many bioactive oligosaccharides. It was [the petitioner] who discovered the unexpected α -stereo-outcomes during neighboring group

participation and later found the proper methods to correct that against rule glycosylation. His methods greatly enriched oligosaccharide library and efficiently reduced synthetic steps of some bioactive oligosaccharides. He is definitely the pioneer of the synthetic carbohydrate chemistry. His observations give great influence on my research which published on *Carbohydrate Research*

* * *

In general, [the petitioner's] research on the carbohydrate chemistry involves two aspects: first, he discovered a fair stereo-selective glycosylation method that can be followed and mastered by other researchers very easily. On the other hand, he synthesized many bioactive complex oligosaccharides with his newly-discovered selective method. Before [the petitioner's] extensive effort, synthesis of some oligosaccharides had been quite difficult, and even impossible. Undoubtedly his method of efficient stereo-selective glycosylation will benefit the research work of other researchers greatly, as it has already done so for our own research.

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, presentation or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

[REDACTED], states:

I got to know [the petitioner] in February 1997 when I was a [REDACTED]. At the beginning, he joined my research group as an undergraduate. After obtaining his B.Sc. in June 1997, he became a graduate student under my supervision. Although I moved to Canada in December 1998, I kept directing his research by telephone, mails and e-mails till he got his M.Sc. in June 2000.

* * *

During worked with me [sic], [the petitioner] focused his research on a project, "[REDACTED] clays" supported by [REDACTED]. He had met these tasks admirably. He developed facile synthesis for triarylmethanes and coumarins and some new procedures for protection of hydroxyl and carbonyl groups. The most significant result of his work was the alkylation-addition reactions between active phenols and cholesterol. X-ray and spectroscopic methods, such as 2D-NMR, confirmed the structure and the stereochemistry of the products. By doing those work, [the petitioner] got a good training on practical synthetic skills such as chromatography and micro scale crystallization. He had also got valuable experience in elucidation structure of organic compounds by NMR (^1H , ^{13}C , and 2D), IR, UV and mass

spectroscopic methods. As a result of his hard work, he got five papers published in international journals, such as [REDACTED] I, and [REDACTED]

The petitioner submitted citation evidence showing that his published work is well cited. For example, the petitioner's most frequently cited article (published in [REDACTED]) has been cited to 45 times. On appeal, counsel argues that the director disregarded the extensive number of citations to the petitioner's work. We acknowledge that the petitioner's work is well cited, but there is no evidence showing that his published findings rise to the level of original scientific contributions of major significance in the field. With regard to the petitioner's publications, 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 petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner's scholarly articles under the next criterion.

[REDACTED] states:

[The petitioner] is [REDACTED] employee and I know him very well. . . . His successfully design [*sic*] and synthesized a novel cancer drug delivery carrier platform with significant improvement in anticancer therapeutic index: dramatically reduced the cancer drug toxicity to the body and significantly increase the anticancer efficiency.

The petitioner's work for [REDACTED] post-dates the petition's July 31, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's work for the company in this proceeding. Nevertheless, [REDACTED] does not provide specific examples of how the petitioner's novel cancer drug delivery carrier platform is being implemented or otherwise constitutes an original contribution of major significance in the field.

Counsel further argues that the director disregarded the information contained in the letters of support. 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. 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware

of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a researcher who has made original contributions of major significance.

Although the record includes numerous predictions of the potential impact of the petitioner's work, the submitted evidence does not show how the petitioner's work has significantly impacted the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that he has already made original contributions of major significance in the field. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner has documented his authorship of scholarly articles in professional journals and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted evidence of his participation in scientific conferences and symposia as evidence for this criterion. The petitioner's field, however, is in the sciences rather than the arts. The plain language of this regulatory criterion indicates that it applies to artists. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations were not displayed at artistic exhibitions and are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that the petitioner has already met.

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

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

The petitioner submitted letters of support discussing his work at [REDACTED] the [REDACTED] and [REDACTED]. As previously discussed, the petitioner's employment with [REDACTED] post-dates the petition's July 31, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's role for [REDACTED] in this proceeding. With regard to [REDACTED] and [REDACTED] there is no supporting evidence showing that these institutions have a distinguished reputation. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, while the

petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his subordinate roles were leading or critical for the preceding institutions. For example, there is no organizational chart or other evidence documenting where the petitioner's position fell within the general hierarchy of his research institutions. We note that the petitioner's role at [REDACTED] and the [REDACTED] was that of a student. Moreover, the petitioner's postdoctoral appointments at the [REDACTED] and [REDACTED] were designed to provide specialized research experience and training in his field of endeavor.⁵ The petitioner's evidence does not demonstrate how his temporary appointments differentiated him from the other research scientists employed by the preceding institutions, let alone their tenured faculty and principal investigators. For instance, unlike [REDACTED] there is no evidence that the petitioner has often served as a principal investigator and initiated research projects of his own. The documentation submitted by the petitioner does not establish that he was responsible for the preceding institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that he meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) – (v), (vii), and (viii).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i), we note that competition for the petitioner's awards from the [REDACTED] and the [REDACTED] was limited to other graduate students. Experienced experts in the field are not seeking such awards. Thus, they cannot establish that a petitioner is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). Moreover, we note that the petitioner's Innovation Fund Grant from the [REDACTED] is received annually by dozens of Ph.D. students. For example, the evidence submitted by the petitioner indicates that 42

⁵ "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." *See* <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on February 1, 2011, copy incorporated into the record of proceeding.

students received the award in 2002 alone. In this case, the submitted documentation does not establish that the petitioner's student awards from the [REDACTED] and the [REDACTED] are an indication that he "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). 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 60899.⁶ Likewise, it does not follow that receipt of an award restricted to graduate students should necessarily qualify a researcher for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. The submitted documentation indicates that the journals' editorial staff requested [REDACTED] to review the manuscripts who then assigned the duty to the petitioner and numerous coworkers. Being requested to review an article by one's own supervisor is not evidence of national or international acclaim. Moreover, peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. 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 that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal as of the petition's filing date, we cannot conclude that his level of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. For example, [REDACTED] letter states that he serves as the [REDACTED]

With regard to the petitioner's original research work submitted for 8 C.F.R. § 204.5(h)(3)(v), as stated above, it does not appear to rise to the level of contributions of "major significance" in the

⁶ 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.

field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)...." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a scientific researcher of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

Regarding the evidence submitted for 8 C.F.R. § 204.5(h)(3)(vi), we acknowledge that the petitioner has published fifteen journal articles. The Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition (accessed at www.bls.gov/oco on February 1, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. 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 reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field. That said, we acknowledge the citation evidence showing the positive response in the field to the petitioner's research. We are not persuaded, however, that the petitioner's original contributions, presented in his well-received publications, rise to the level of "contributions of major significance" or sustained national or international acclaim in the context of his field.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(vii), in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with numerous other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at venues where the petitioner's work appeared was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level.

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 post-doctoral researcher at the time of filing, relies on his awards which were limited to graduate students, his ACS membership, patent applications, his published and presented research, citation evidence showing that his work is well cited, and the praise of members of his field.

We note that many of the petitioner's references' credentials are far more impressive than the petitioner's. For example, [REDACTED] states:

I . . . hold the position of [REDACTED] . . . I was honored by the 2005 [REDACTED] and in 2006 was selected as an [REDACTED]. Over the past decade, I have published over 70 papers in leading journals including [REDACTED]. In addition, I serve as an [REDACTED] a leading international journal in the field of carbohydrate chemistry.

The "Biographical Sketch" accompanying [REDACTED] letter indicates that he is a [REDACTED], that he has authored 117 publications, and that he served as [REDACTED]

[REDACTED] states that he is a [REDACTED] and has "published more than 60 research papers in high reputed international journals."

[REDACTED] states: "I am one of the editors of the journals: [REDACTED]

[REDACTED] states:

I am a [REDACTED] . . . I have authored more than 110 peer-reviewed publications in top professional journals. I have reviewed numerous manuscripts for top-ranked scientific journals, such as the *Journal of the American Chemical Society*, *Nature*, *Angewandte Chemie*, *The Journal of Organic Chemistry*, the *Journal of Inorganic Chemistry*, and *Drug Discovery Today* among many others. I have reviewed grant proposals for the [REDACTED], The [REDACTED] the [REDACTED]

Finally, [REDACTED] states:

My position is that of [REDACTED] in [REDACTED] and I am a [REDACTED] of [REDACTED] I was on the [REDACTED] (1990-2000), [REDACTED] (1991-2005), [REDACTED] (1992-present), [REDACTED] (1993-2002), [REDACTED] (1995-1998), [REDACTED] and [REDACTED] (1997-2003), [REDACTED] (2001-present). I was elected [REDACTED] (1995), received the [REDACTED]

[REDACTED]
(1995); [REDACTED] (1995), [REDACTED] for [REDACTED]
[REDACTED] (1998, [REDACTED]
Prize, [REDACTED]
[REDACTED] 2005). I was on the organizing committee of the [REDACTED]
[REDACTED] 2008 [REDACTED]
[REDACTED], 2007. I was
the [REDACTED].

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a scientific researcher, or with being among that small percentage at the very top of the field of endeavor.

III. Conclusion

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.