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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

B2

[REDACTED]

FILE: [REDACTED] Office: TEXAS 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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. 723 101<sup>st</sup> 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 (9<sup>th</sup> 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.<sup>1</sup> 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 (9<sup>th</sup> 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).

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<sup>1</sup> 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).

## II. Analysis

### A. Evidentiary Criteria

According to the petitioner's initial statement, this petition, filed on August 12, 2009, seeks to classify the petitioner as an alien with extraordinary ability in medical imaging and simulation. The petitioner received his Ph.D. in Electrical Engineering from the [REDACTED] in 2006. At the time of filing, the petitioner was working for the [REDACTED] as a technical advisor in patent prosecution. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

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

The petitioner submitted a certification from the [REDACTED] stating:

[The petitioner] is hereby given limited recognition under 37 CFR § 11.9(b) as an employee of [REDACTED] to prepare and prosecute patent applications in which the patent applicant is a client of [REDACTED], and the attorney or agent of record in the applications is a registered practitioner who is a member of [REDACTED]

The petitioner also submitted a certification from the [REDACTED] stating:

[The petitioner] is hereby given limited recognition under 37 CFR § 11.9(b) as an employee of the [REDACTED] law firm to prosecute patent applications in which the patent applicant is a client of [REDACTED] law firm, and an attorney or agent of record in the applications is a registered practitioner who is a member of [REDACTED] law firm.

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

The petitioner's receipt of "limited recognition" to prepare and prosecute patent applications with the USPTO does not equate to "membership" in an association in the field for which classification is sought. Further, there is no evidence showing that being given limited recognition by the USPTO requires outstanding achievements as judged by recognized national or international experts in the petitioner's field.

The petitioner's initial documentation included evidence indicating that he is a member of the [REDACTED] and information from the association's website specifying its membership requirements. The submitted material from the [REDACTED] website states:

To qualify for membership, applicants must be members in good standing of the Bar of a court of record of the United States or any State. Foreign affiliate members must be able to practice in a court of general jurisdiction in their countries to be considered for membership. [REDACTED] also has student memberships available for those regularly enrolled in a law school approved by the Association of American Law Schools and membership is available to patent agents who are registered with the USPTO.

We cannot conclude that being a member in good standing of the Bar of a court of record located in the United States, being eligible to practice in a court of general jurisdiction in one's foreign country, or being registered with the USPTO equate to outstanding achievements. Further, there is no evidence showing that prospective AIPLA members are evaluated by recognized national or international experts in the petitioner's field.

The petitioner also submitted documentation showing that he is a member of the [REDACTED] and general information about the association from its website, 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.<sup>3</sup>

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

<sup>3</sup> According information posted on the [REDACTED] internet site, "The grade of Member is limited to those who have satisfied [REDACTED]-specified educational requirements and/or who have demonstrated professional competence in [REDACTED] designated fields of interest. For admission or transfer to the grade of Member, a candidate may be either: (a) An individual who has received a three-to-five year university-level or higher degree from an accredited institution or program and in an [REDACTED]-designated field; (b) An individual who has received a three-to-five year university-level or higher degree from an accredited institution or program and who has at least three years of professional work experience engaged in teaching, creating, developing, practicing or managing in IEEE-designated fields; or (c) An individual who, through at least six years of professional work experience, has demonstrated competence in teaching, creating, developing, practicing or managing within IEEE-designated fields." See [http://www.ieee.org/membership\\_services/membership/join/qualifications.html](http://www.ieee.org/membership_services/membership/join/qualifications.html), accessed on January 26, 2011, copy incorporated into the record of proceeding. With regard to the petitioner's "Member" grade, we cannot conclude that meeting minimum "educational requirements" and demonstrating "professional competence" equate to "outstanding achievements."

*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.<sup>4</sup>

The petitioner submitted articles posted at HPCwire.com, DOTmed.com, USNews.com, BusinessWeek online, and Virtual Medical Worlds' website. None of these articles mention the petitioner by name and they are not about him. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien." Further, there are no internet readership statistics or other comparable evidence showing that that HPCwire.com, DOTmed.com, and Virtual Medical Worlds' website equate to major trade publications or other major media.

The petitioner also submitted copies of six articles citing to his work.<sup>5</sup> 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. As previously discussed, 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.*

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

<sup>5</sup> In response to the director's request for evidence, the petitioner submitted six articles citing to his work, but five of those articles were duplicate copies already submitted at the time the petition was initially filed.

The petitioner submitted an October 2, 2005 e-mail from [REDACTED] in the [REDACTED] to the petitioner requesting that he review manuscript T-SP-03726-2005 for *IEEE Transactions on Signal Processing*. The petitioner also submitted an April 4, 2006 e-mail requesting that he review a manuscript entitled "Visualization of Depth in 2D Images (A Perspective Mathematical Model Approach)" for *Journal of Computing and Information Technology (JCIT)* and a July 15, 2009 letter from the Editor-in-Chief of *JCIT* verifying the petitioner's service as a reviewer.

In response to the director's request for evidence, the petitioner submitted a September 11, 2009 letter from [REDACTED] at [REDACTED] stating:

In 2006, I served on the [REDACTED] and was in charge of the technical review process of the [REDACTED] and [REDACTED]

\* \* \*

During the review process, [the petitioner] completed a thorough and rigorous review of eight submissions in the area of his expertise. Of nearly 500 reviewers that we invited to review the submissions, [the petitioner] was among a very select group of reviewers who was able to provide in-depth comments and opinions that were extremely helpful in making decisions for acceptances and rejections.

The petitioner also submitted an August 30, 2009 letter from [REDACTED] and [REDACTED], who served as the petitioner's Ph.D. thesis advisor. [REDACTED] states:

Both *IEEE TMI (Transactions on Medical Imaging)* and *IEEE Multimedia Magazine* employ a stringent peer-review process for accepting submissions for publication. As an Editor of numerous IEEE-sponsored journals, I know only experts in the field are invited to serve as the reviewers for these two international journals.

From December 2005 to January 2006, I invited [the petitioner] to review a submission to *IEEE TMI*, entitled "A fast and accurate tomosynthesis simulation model" (submission ID TMI-2005-0536) and two submissions to *IEEE Multimedia Magazine*, entitled "Interactive system for the active exploration of cultural heritage by blind people" and "Supporting Communication on Bioelasticity by Haptic Interaction with Deformable Media," respectively.

The petitioner's response included supporting documentation showing that the petitioner peer-reviewed the preceding three articles. The petitioner also submitted October 2005 and January 2006 e-mails from [REDACTED] confirming that the petitioner completed the review of manuscript T-

[REDACTED] for *IEEE Transactions on Signal Processing*.<sup>6</sup> The petitioner's response also included e-mails from June and July 2006 indicating that the petitioner reviewed the manuscript entitled "Visualization of Depth in 2D Images (A Perspective Mathematical Model Approach)" for *JCIT*.

Thus, the record contains evidence showing that the petitioner participated in reviewing five manuscripts for four journals and eight submissions to the ICASSP during 2005 and 2006. This documentation meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

The petitioner submitted letters of support discussing his work as a technical advisor in patent prosecution and as a biomedical engineering researcher.

[REDACTED] states:

As a patent law firm, our work naturally concerns innovative technologies, many of which are the most advanced scientific findings in the world. [The petitioner] is a technical advisor at Leydig, where he is responsible for the scientific and technical aspect of patent procurement in the field of electrical and mechanical engineering, such as signal and image processing, medical imaging, computer software, computer graphics and automotive engineering. He holds a critical role in developing patent applications, providing strategies for responses to U.S. Patent and Trademark Office actions, and preparing technical opinions on patent law issues relating to electrical and mechanical engineering topics. We hired [the petitioner] for his expertise and extraordinary ability in science and engineering, his solid knowledge of U.S. patent law, and for his outstanding skills in patent procurement.

\* \* \*

In January 2009, [the petitioner] transferred to our firm and quickly took on many challenging projects in patent prosecution. In these projects, [the petitioner] showed an outstanding ability to quickly assess the merit of an invention and to develop high-quality claims and arguments directed to given technologies. Many of these inventions involved complex medical imaging and computer simulation technologies such as colposcopy imaging, magnetic resonance imaging, and image-guided surgery, developed by

<sup>6</sup> We note that [REDACTED] resume states that he served as [REDACTED] from 2002 – 2006.

renowned scientists with years of experience in the field. In less than a week, [the petitioner] was able to gain a thorough understanding of these technologies by analyzing the scientific papers and materials authored by these scientists. Most importantly, he was able to quickly identify the most important novelties of these inventions and incorporate them into the patent applications.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to his law firm and its clients. The information provided by [redacted] does not establish that the petitioner's work for [redacted] has significantly impacted the field of medical imaging and simulation beyond the scope of his projects for his current employer.

[redacted] states:

In September 2007, we hired [the petitioner] as a Technical Advisor in patent prosecution because of his extraordinary scientific and technological skills. As a law firm specialized in patent procurement, MBHB helps clients to secure their patent rights by obtaining patents for their new inventions. At MBHB, [the petitioner's] work involved analyzing the patentability of new inventions, developing patent claims and patent applications that provide proper legal coverage for inventions, and working with the United States and Patent Office (USPTO) to precisely define the scope of each patent claim. A majority of inventions for which [the petitioner] successfully developed patent applications involved complex technologies, such as optical imaging systems for biological tissue sample analysis and brain tumor diagnosis based on magnetic resonance imaging. These technologies were invented by well known scientists and researchers from universities and technological companies around the world. Properly understanding every inventive aspect of these technologies in order to develop high-quality patent applications and translating the technical descriptions into claims to provide comprehensive patent protection required [the petitioner's] extensive experience and unparalleled scientific abilities in medical imaging and simulation.

With regard to the letters submitted by [redacted] and [redacted], there is no evidence showing that the petitioner's work for their law firms equates to original contributions of major significance in the field. While the petitioner's work as a technical advisor was beneficial to the preceding firms and their clients, there is no evidence demonstrating that his projects for them have significantly impacted the field at large. Once again, a contribution to one's employer and its clients is not necessarily a contribution of major significance in the field. Further, the petitioner has not established that his specific work as a "technical advisor" prosecuting patents for technologies invented by "renowned" and "well known" scientists is *original* as required by the plain language of this criterion. Rather, the petitioner is translating the original technological innovations created by others into patent applications to provide proper legal coverage for those inventions.

In discussing the petitioner's Ph.D. research at the [REDACTED] states:

I have known [the petitioner] since he first joined our department in June 2001 as a Ph.D. student.

\* \* \*

[The petitioner] was a key investigator of our research group, and worked on a number of highly successful projects. One such project involved digital tomosynthetic imaging, which was funded by [REDACTED] a [REDACTED], a leading provider of medical imaging systems. Digital tomosynthesis is a method for producing sectional images of a human body. . . . Traditional tomosynthetic images, however, contained excessive artifacts, and the imaging speeds were very slow. These technical issues seriously limited the practical application of tomosynthesis in clinical settings until [the petitioner] successfully developed his high-performance reconstruction algorithm. In order to improve the image quality and reconstruction speed, [the petitioner] used a novel multi-resolution statistical reconstruction method, which provided a perfect solution for high-quality, high-speed digital tomosynthesis. His ingenious approach reduced imaging time by 60% and improved the image quality by 80%. As a result, [the petitioner's] tomosynthesis system has been shown to produce greater sensitivity and specificity in breast cancer screening than previously employed systems.

While the petitioner's Ph.D. research produced a multi-resolution statistical reconstruction method in a collaborative project funded by [REDACTED], a [REDACTED], there is no evidence from the company indicating that it successfully implemented the petitioner's algorithm in its product line or that his statistical reconstruction method otherwise equates to an original contribution of major significance in the field. Further, with regard to the petitioner's Ph.D. work in [REDACTED] of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on January 27, 2011 and incorporated into the record of proceedings), states:

*Electrical engineers design, develop, test, and supervise the manufacture of electrical equipment. . . .* Although the terms electrical and electronics engineering often are used interchangeably in academia and industry, electrical engineers traditionally have focused on the generation and supply of power, whereas electronics engineers have worked on applications of electricity to control systems or signal processing. Electrical engineers specialize in areas such as power systems engineering or electrical equipment manufacturing.

*Electronics engineers, except computer,* are responsible for a wide range of technologies, from portable music players to global positioning systems (GPS), which can continuously provide the location of, for example, a vehicle. *Electronics engineers design, develop, test, and supervise the manufacture of electronic equipment* such as broadcast and communications systems. Many electronics engineers also work in areas

closely related to computers. . . . Electronics engineers specialize in areas such as communications, signal processing, and control systems or have a specialty within one of these areas – control systems or aviation electronics, for example.

(Emphasis added.) See <http://www.bls.gov/oco/ocos027.htm>. If the regulation at 8 C.F.R. § 204.5(h)(3)(v) is to have any meaning, it must be presumed that merely performing routine duties inherent to one's occupation (such as designing, developing and testing novel systems) is not necessarily indicative of original scientific contributions of "major significance" in the field.

further states:

In addition, [the petitioner] was also one of the first scientists to develop a practical digital tomosynthesis system using low cost X-ray imaging equipment. This was the first practical tomosynthesis system in the world and has been integrated by [redacted] into a commercial imaging system for clinical breast cancer screening, and is now undergoing the FDA approval. Notably, due to the success of [the petitioner's] research in tomosynthesis, [redacted] was granted [redacted] of the Year Award in women's health diagnostics.

The record, however, does not include letters of support or other documentation from [redacted] indicating that [redacted] was granted [redacted] 2004 of the Year Award in women's health diagnostics "due to the success of [the petitioner's] research in tomosynthesis." As previously discussed, the petitioner submitted a November 11, 2004 article posted on Virtual Medical Worlds' website entitled "Hologic receives [redacted] 2004 Technology Leadership of the Year Award in women's health diagnostics for breast cancer." This article, which does not even mention the petitioner, states:

Hologic first demonstrated tomosynthesis with patient images and a prototype system as an add-on to its Selenia full field digital mammography system at the Radiological Society of North America meeting in Chicago in November 2003. Clinical trials began in the summer of 2004 at major university research sites in the United States.

In this instance, there is no evidence showing that the petitioner presented original work or coauthored Hologic's presentation at the Radiological Society of North America meeting in Chicago in November 2003. Without evidence from Hologic Inc. detailing the specific nature of the petitioner's contribution to its commercial tomosynthesis system and the extent of his system's implementation as a mammography screening technology, we cannot conclude that the petitioner's work for the company's subsidiary, Direct Radiography Corporation, constitutes an original scientific contribution of major significance in the field.

continues:

During his Ph.D. training, [the petitioner] also made several notable contributions to the field of computer-aided surgical simulation (CASS), which has significant potential to improve medical training in our country. CASS is a new technology that has been shown

to help medical students master surgical skills quicker, and to enhance the understanding of a variety of surgical procedures. [The petitioner's] research in CASS addressed important issues concerning soft tissue modeling and high-performance real-time interactive simulations. . . . Working at the Bioinformatics Center at the Delaware Biotechnology Institute, [the petitioner] successfully developed a novel adaptive deformable model. His adaptive deformation algorithm, based on efficient computation methods, is well suited for high-performance computer-aided surgical simulations where accurate soft tissue models and fast computations are highly desired. Following his exceptional findings, [the petitioner] designed and built from scratch a cutting-edge virtual surgical simulator using innovative haptic devices that generated accurate human-computer interactions with extremely high efficiency. Unlike traditional surgical training models, which rely on physical materials that are expensive and potentially dangerous, training programs generated by [the petitioner's] simulator can be easily controlled and repeated without additional cost.

does not provide specific examples of how the petitioner's adaptive deformable algorithm and surgical simulator are being utilized by others in the field. There is no evidence showing that petitioner's work is frequently cited by independent researchers or otherwise equates to original scientific contributions of major significance in the field.

and has coauthored several articles with since September 2005. repeats observations regarding the petitioner's development of a multi-resolution statistical algorithm, adaptive deformation algorithm, and surgical simulation model.

states:

[The petitioner's] Ph.D. research was in the area of medical image processing. His research made significant contributions that expanded scientific knowledge in the field by improving tomosynthetic imaging, which is an advanced medical imaging technology for breast cancer detection. [The petitioner] invented a multi-resolution statistical reconstruction algorithm that substantially improved the quality and speed of tomosynthetic imaging, which made cancer detection significantly easier. This finding was been [*sic*] published at several prominent international conferences, including the International Symposium of Biomedical Imaging and the 29<sup>th</sup> Bioengineering Conference.

\* \* \*

Work by [the petitioner] in computer-aided surgical simulation also has generated important results. During the course of this research at the [the petitioner] developed a novel mathematic model for high-performance computer-aided surgical simulations. His work has the potential to significantly reduce

the use of animals and humans in medical training programs for surgeons and medical students, which will have the effect of improving the safety of these training programs while reducing the costs. This work has been presented at international conferences, including the [redacted] and [redacted] international conference, and the [redacted]

\* \* \*

[The petitioner's] research work at [redacted] also is beneficial to the United States. . . . [The petitioner] took the challenge to develop a computer-aided CT image analysis system to automate cardiac disease diagnosis by analyzing a patient's CT angiograms. This system is based on sophisticated medical image processing algorithms and multivariate quantification methods. A comprehensive clinical study led by [the petitioner] has confirmed that this discovery has narrowed the gap between research development and practical clinical application in coronary disease diagnosis. This outstanding work by [the petitioner] has been published in the *American Journal of Roentgenology*, a high regarded, peer-reviewed journal with worldwide circulation.

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. 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. Regardless, there is no documentary evidence demonstrating that the petitioner's peer-reviewed publications are frequently cited by independent researchers or otherwise rise to the level of original contributions of major significance in the field.

[redacted], states:

[The petitioner] is one of the few scientists in the world who have done extensive research work on medical imaging. For example, [the petitioner] has made significant contributions to digital tomosynthesis (DTS) by inventing a multi-resolution statistical reconstruction algorithm. . . . He developed innovative reconstruction methods that used statistical modeling in a new multi-resolution framework. These methods substantially reduced image artifacts and increased the computational speed for DTS. A commercialized breast cancer imaging system based on [the petitioner's] research was manufactured by [redacted] and was widely reported by nationwide media outlets, including the U.S. News, the Business Week, the Medical Industry Business Weekly, the

Virtual Medical Worlds Monthly, etc. [The petitioner's] innovative finding paved the way for routine clinical application of DTS, which improved breast cancer diagnosis.

As previously discussed, none of the articles submitted from the preceding media sources identify the petitioner as a primary contributor to [REDACTED] commercialized breast cancer imaging system. We further note that the December 2, 2005 article posted at USNews.com states that [REDACTED] is "one of the companies developing tomosynthesis systems. Others include GE Healthcare, which displayed a model at the radiology meeting that has been undergoing trials at [REDACTED]'. In this case, there is no evidence from [REDACTED] detailing the specific nature of the petitioner's contribution to its commercial tomosynthesis system and the extent to which his original methods are being utilized in the industry.

[REDACTED] continues:

In addition, the results of [the petitioner's] research have been presented at prestigious international conferences including the IEEE International Symposium on Biomedical Imaging and the 29th Bioengineering Conference. These important findings reached numerous researchers from all over the world at each of these conferences.

\* \* \*

During the course of his Ph.D. program, [the petitioner] conducted cutting-edge research in virtual surgical simulation and obtained exciting results. He invented an adaptive algorithm for a high performance virtual surgical simulation. [The petitioner] was the first to demonstrate that a mass-spring model based on an adaptive algorithm can be as accurate as a finite element model, which is accurate but computationally slow. Following these new breakthroughs, [the petitioner] developed a novel, simple, and fast computer graphic program for virtual surgical simulations. [The petitioner's] invention significantly reduced computational costs for accurate virtual surgical simulations by over 80%. This improvement allowed simulators to be built at a significantly lower cost, and allowed for the widespread application of such simulators in routine medical training. These significant findings have been presented as posters or oral presentations at several prestigious international conferences, including the International Symposium on Haptic Interface for Virtual Environment and Teleoperator Systems, Medicine Meets Virtual Reality international conference, and the annual conference of the Special Interest Group on Graphics and Interactive Techniques (SIGGRAPH).

There is no documentary evidence demonstrating that the findings presented by the petitioner at the preceding conferences are frequently cited by independent research groups or otherwise constitute original contributions of major significance in the field. 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 research engineer who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

[REDACTED] states:

[The petitioner] developed an innovative computer-aided virtual surgery simulation system by neatly integrating novel haptic devices into virtual environments to render sophisticated immersive virtual surgical procedures. [The petitioner's] simulation system provided the medical trainees with realistic visual renderings of surgical environments and high-fidelity tactile feedback (simulated sense of touch). . . . Furthermore, [the petitioner's] system allowed surgeons to practice an operation multiple times without the use of any cadavers or animals. It also allowed for the simulation of rare pathological cases, where complications could conveniently be introduced during the simulated surgery to test the user on real world scenarios.

[The petitioner] also developed a fast deformable model, a critical component for high-fidelity surgical simulations. This deformable model is considered to be a promising breakthrough in virtual surgery simulation for its ability to simulate human tissues and organs quickly and accurately. This innovative work by [the petitioner] allows other scientists, like myself, to better understand simulated tissue responses in computer-generated surgery environments.

The results of [the petitioner's] research work have been presented at a number of leading international conferences, including the Medicine Meets Virtual Reality conference, the annual conference of the Association for Computing Machinery (ACM)'s Special Interest Group on Graphics and Interactive Techniques (SIGGRAPH), and the Symposium on Haptic Interfaces for Virtual Environment and Teleoperator Systems. . . . [The petitioner's] publications in the proceedings of these conferences have been cited by researchers from China and Europe in the same field.

As previously discussed, the petitioner submitted an aggregate of only six articles citing to his body of work. No single article by the petitioner has garnered more than three independent citations. For instance, the petitioner submitted documentation showing that his conference paper from the "14<sup>th</sup> Symposium on Haptic Interfaces for Virtual Environment and Teleoperator Systems" was independently cited only twice. Ultimately, the limited number of submitted citations to the petitioner's articles is not indicative of contributions of "major significance" in the field.

[REDACTED] states:

Although I have never worked with [the petitioner] directly, I came across his research work by reviewing his paper submission when I served on the committee of the 2005 ACM SIGGRAPH conference, and also his publications at 2006 [REDACTED].

\* \* \*

[The petitioner's] paper was accepted as a poster presentation and he was further invited to give an oral presentation in the Poster Competition program, which is one of the major focuses of the conference. At the 2005 SIGGRAPH conference, only 20 posters were selected from the 144 accepted submissions to participate in the Poster Competition program. [The petitioner's] work was selected because of the novelty of his method and the significance of his results. His contribution was one of the most significant developments presented in our field of research at this conference. All my international colleagues on the review committee shared this opinion with me.

In many biomedical applications, deformation modeling for simulating soft tissue behaviors is a central and critical issue, in particular, in real-time computer-based surgery simulation that is used to train surgeons and medical students. . . . The mass-spring model proposed by [the petitioner] provides a revolutionary strategy for dealing with situations where it is not possible to for [sic] pure physical models to complete necessary computations due to the restriction of time in real-time simulation systems. It provides realistic result with a more economic design than those from finite element methods. Such high-level improvements to simulation strategy prove the huge significance of [the petitioner's] research in computer-based surgery simulation. In addition to the graphic simulation, [the petitioner] provided an excellent example of integrating a haptic simulation loop to the surgery simulation system, thereby generating a tactile feedback that provided trainees with even more realistic experience than conventional computer-based surgery simulations.

does not provide specific examples of how the original mass-spring model proposed by the petitioner is being utilized by others in the field. Further, there is no evidence showing that the findings presented by the petitioner at the 2005 SIGGRAPH conference are frequently cited by independent researchers or otherwise equate to original contributions of major significance in the field.

states:

In 2006, hired [the petitioner] for his extraordinary abilities in both medical imaging and computing, because clinical technologies are focused on medical image processing and computer-aided diagnosis aspects of radiology.

\* \* \*

[The petitioner] was the first scientist in the world to develop a computer-aided stroke diagnosis system to improve the speed and accuracy of stroke detection and quantification. . . . [The petitioner] has made substantial findings in stroke diagnosis by creatively combining computer visualization technologies with CT brain perfusion

imaging. He discovered that fast and accurate stroke diagnosis could be achieved by quantitatively comparing cerebral blood flow maps with cerebral blood volume maps produced by CT perfusion imaging. Based on this groundbreaking discovery, [the petitioner] developed a computer program that rapidly located a patient's stroke region and accurately quantified the salvageable brain tissue. This extremely valuable information allowed neuroradiologists to carry out accurate revascularization treatments, which could save the patient's life. Without [the petitioner's] work, radiologists would have to spend hours, even days, manually identifying and quantifying pathological tissue in patient CT images.

Another significant contribution is [the petitioner's] work in computer-aided coronary heart disease diagnosis. . . . It is well known that coronary calcification detected by CT imaging is a marker for atherosclerotic diseases with prognostic significance.

However, potentially unstable plaque is characterized by a high lipid content rather than calcification, which makes detection using the calcium score very difficult. To address this problem, [the petitioner] focused on the CT angiogram images and developed a novel system to assess the prevalence and severity of atherosclerotic disease in patients without coronary calcification. To carry out his projects, he developed unique methodologies to analyze CT angiograms rooted in an information-based imaging model that not only considers the image features, but also takes into account other patient information, including stress test results and the characterization of plaques.

While the petitioner's work for [redacted] was important to his employer, there is no evidence demonstrating that the systems he developed while at [redacted] are widely recognized beyond that company such that they equate to original contributions of major significance in the field. As previously discussed, 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. For instance, [redacted] does not indicate the extent to which the petitioner's computer-aided stroke diagnosis system and methodologies to analyze CT angiograms have been licensed or successfully marketed in the industry. Thus, the impact of the petitioner's innovations at [redacted] is not documented in the record.

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 in the field. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner has performed admirably on the various projects to which he was assigned, the submitted documentation does not establish that his work constitutes original contributions of "major significance" in the field.

On appeal, counsel 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 an engineering researcher who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

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

The petitioner has documented his authorship of eleven scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

*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]

[REDACTED] While the petitioner has performed admirably on the projects to which he was assigned, there is no evidence showing that his roles were leading or critical for the preceding institutions. For example, there is no organizational chart or other evidence documenting where the petitioner's positions fell within the general hierarchy of [REDACTED], and [REDACTED]. We note that the petitioner's role at the [REDACTED] was that of a student. Moreover, the petitioner worked as an engineer "intern" at [REDACTED]. The petitioner's evidence does not demonstrate how his positions differentiated him from the other professionals employed by the preceding institutions, let alone their senior management or tenured faculty. The submitted documentation does not establish that the petitioner 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)(ii), (iii), (iv), (v), and (viii).

With regard to 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. We note that four out of the five journal manuscript reviews performed by the petitioner were requested by his superiors at the [REDACTED] and [REDACTED]. Being requested to review an article by one's own advisor and another professor in the [REDACTED] is not evidence of national or international acclaim. Further, we note that peer review is a routine element of the process by which articles are selected for publication in scientific journals or for presentation at professional conferences. Normally a journal or conference's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for the editorial staff to ask multiple reviewers to review a manuscript and to offer comments. The 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 served in an editorial position for a distinguished journal or for a reputable conference, we cannot conclude that his level of peer review is commensurate with national or international acclaim at the very top of the field of endeavor. Finally, there is no documentary evidence of the petitioner's participation in the peer review process subsequent to 2006. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not commensurate with *sustained* national or international acclaim as of the August 12, 2009 filing date of the petition.

Regarding the petitioner's original research findings submitted for 8 C.F.R. § 204.5(h)(3)(v), as stated above, they do not appear to rise to the level of contributions of "major significance" in the 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 an engineering 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." Notably, the Department of Labor's OOH, 2010-11 Edition (accessed at

[www.bls.gov/oco](http://www.bls.gov/oco) on January 27, 2011 and incorporated into the record of proceedings), states that "Electrical engineers design, develop, test, and supervise the manufacture of electrical equipment." See <http://www.bls.gov/oco/ocos027.htm>. As the design and development of electrical systems are inherent to engineering research, the mere originality of the petitioner's work does not set the petitioner among "that small percentage of individuals that have risen to the very top of their field of endeavor." 8 C.F.R. § 204.5(h)(2). For the reasons discussed above, the record does not contain sufficient evidence that the petitioner's original innovations had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Moreover, there is no documentary evidence showing that the petitioner is responsible for any original engineering contributions subsequent to his departure from [REDACTED] in 2007.<sup>7</sup> The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(v) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

While the petitioner has published scholarly articles based on his research at [REDACTED] and the [REDACTED], the OOH (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on January 28, 2011 and incorporated into the record of proceedings) provides information about the nature of employment as a postsecondary teacher and the requirements for such a position. See <http://www.bls.gov/oco/pdf/ocos066.pdf>. 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. Further, there is no documentary evidence showing that the petitioner has published any articles or conference papers subsequent to July 2008. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(vi) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. As previously discussed, the documentation submitted by the petitioner indicates that his body of work has been independently cited to only six times. This minimal level of citation is not sufficient to demonstrate that the petitioner's articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his 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 relies primarily

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<sup>7</sup> The petitioner's work at [REDACTED] resulted in an article submitted to the *American Journal of Roentgenology* in July 2007 and later published in July 2008.

upon his participation in the widespread peer review process, his research work, less than a dozen articles published with his research supervisors (such as [REDACTED]), copies of only six research articles by others citing to the petitioner's work, his [REDACTED] and [REDACTED] memberships (which have not been shown to require outstanding achievements), and his more recent work as a patent technical advisor.

Many of the petitioner's references' credentials are more impressive than those of the petitioner. For example, [REDACTED] states:

I am the [REDACTED]  
I am a [REDACTED]  
have served as an [REDACTED] journals and the journal of Applied Signal Processing, and am currently the [REDACTED] of the journal of [REDACTED]  
[REDACTED] In addition, I have served on numerous conference organizations and technical program committees and have served as the [REDACTED] of several international conferences. I am currently a member of the [REDACTED]  
[REDACTED] have written over 200 journals and conference papers, and edited the book [REDACTED]

[REDACTED] states:

I am a [REDACTED] jointly appointed in the [REDACTED]  
[REDACTED] in the [REDACTED]  
respectively. I direct the [REDACTED] which focuses on medical robotics, surgical simulation, human-machine interaction, haptics, personal robotics and in general, the rapid design and prototyping of a wide range of sophisticated electro-mechanical devices and systems. My work in haptic interface technology led to the founding of [REDACTED], the leading provider of 3D touch-enabled technologies including the popular PHANTOM haptic interfaces and the 3D FreeForm software. A variety of other technologies created in my lab have been licensed to companies such as [REDACTED], and most recently to [REDACTED]  
[REDACTED] Each of these companies has served to transfer cutting edge emergent technologies into commercial successes. My credentials also include serving as a member of the [REDACTED]  
as a [REDACTED], and as a [REDACTED]  
[REDACTED] I am the author/coauthor of over 140 scientific papers and the inventor/co-inventor on over 30 patents in haptics and robotics, many of which have been considered seminal contributions to the field. In addition, I have served as an expert witness in patent infringement lawsuits involving haptic technologies and other litigation in robotics.

[REDACTED] has "served in program committees in several prestigious conferences," and has published more than 50 articles.

Finally, [REDACTED] states:

I currently hold a [REDACTED]. I was the acting Head of the School from 2006 to 2007. . . . I have been responsible for a variety of scientific research projects funded by the Research Councils and European Commission involving high performance visualization and virtual environments. I am a member of the [REDACTED] and [REDACTED], which is the main UK government agency for funding research and training in engineering and physical sciences. I have held honorary positions in the [REDACTED] of [REDACTED] and the [REDACTED]. I am a member of the program committee of major international conferences in the field of medical imaging and simulation, which is [the petitioner's] expertise, including the ACM SIGGRAPH conferences (including the 2005 SIGGRAPH Poster Committee), the [REDACTED] conferences and the [REDACTED] Visualization conferences. I was the [REDACTED] the [REDACTED] 2001 and [REDACTED] 2008 conferences. In 2009 I was elected as a Fellow of the [REDACTED] a world-wide professional association devoted to computer graphics and all related visual disciplines.

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 above the level he has attained. Moreover, the record does not include evidence of the petitioner's nationally or internationally acclaimed achievements and recognition in medical imaging and simulation subsequent to his departure from [REDACTED] in 2007. Accordingly, the petitioner has not demonstrated that he has national or international acclaim as a research engineer that has been sustained as of the filing date of the petition. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, the petitioner has not established that his achievements as a patent technical advisor since September 2007 are commensurate with sustained national or international acclaim in medical imaging and simulation, 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.

We note that the petitioner is the beneficiary of an approved petition classifying him as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(B) of the Act. This decision is without prejudice to the approval of that petition, filed under a lesser classification.

**ORDER:** The appeal is dismissed.