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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

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DATE: **JUL 19 2011** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

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 in the sciences.<sup>1</sup> 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 the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii) – (vi) and (viii). For the reasons discussed below, the AAO will 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

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<sup>1</sup> The petitioner was initially represented by attorney [REDACTED]. In this decision, the term "previous counsel" shall refer to [REDACTED].

(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>2</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 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See 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>2</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

This petition, filed on April 23, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. In a March 12, 2009 personal statement accompanying the petition, the petitioner states that his field of expertise is chemistry, biomedical science, and pharmaceutical science. The petitioner received his Ph.D. in Chemistry from the University of Twente in 1993. At the time of filing, the petitioner was working as a Senior Principal Scientist for [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>3</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 his membership card for the American Association of Pharmaceutical Scientists (AAPS) and general information about the organization stating: "Membership is open to any individual who supports the objectives of the association and is willing to contribute to the achievement of these objectives." There is no evidence showing that the AAPS requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used

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<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

in a regulation.<sup>4</sup> Therefore, even if the petitioner were to submit supporting documentary evidence showing that the petitioner's membership in the AAPS meets the elements of this criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts. On appeal, the petitioner does not contest the director's findings for this criterion or offer any arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). 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.<sup>5</sup>

The petitioner submitted a 1994 article about him in *Food Spectrum* entitled [REDACTED]. The petitioner also submitted a 1994 article about him in *University of Twente News* (a publication of the university) entitled [REDACTED] appear suitable for better treatment of blood sickness," but the author of the article was not identified as required by the plain language of this regulatory criterion. Further, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations accompanying the preceding two articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, there is no circulation evidence showing that *Food Spectrum* and *University of Twente News* qualify as professional or major trade publications or other major media.

The petitioner also submitted citation evidence indicating that his work has been cited by other researchers in their publications. Articles which cite to the petitioner's work are primarily about

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<sup>4</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

<sup>5</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.

the authors' own work or recent developments in the field in general, and are not about the petitioner or even his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. The submitted citations 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, the AAO notes that the 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. Accordingly, 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.*

The petitioner did not initially submit documentary evidence for this regulatory criterion. In response to the director's request for evidence, the petitioner submitted five e-mails dated May 16, 2009 requesting that he review abstracts 3690, 3904, 3304, 3311, and 3874 for the AAPS Annual Meeting 2009. The preceding abstract review requests post-date the petition's April 23, 2009 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, there is no documentary evidence demonstrating that the petitioner actually completed the abstract reviews for the AAPS Annual Meeting 2009. The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Receiving a request to perform an abstract review is not tantamount to evidence of one's actual "participation" as a reviewer or judge.

On appeal, the petitioner submits a December 8, 2009 letter from [REDACTED], University of Chemical Engineering, University of Toronto.<sup>6</sup> [REDACTED] states:

I would like to verify that [the petitioner] had reviewed 6-12 paper manuscripts in total from other researchers submitted for publications in the following scientific journals from 1998 to 2000:

*Journal of Biomedical Materials Research*  
*Journal of Biomaterials Science*  
*Journal of Controlled Release*  
*Biomaterials*

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<sup>6</sup> In a previous letter dated March 26, 2009, [REDACTED] states that the petitioner was a postdoctoral fellow in his research group at the University of Toronto from 1998 to 2000 and that he served as the advisor for the petitioner's postdoctoral research.

The preceding letter from [REDACTED] does not specify the means by which the petitioner was selected as a reviewer, the titles of the manuscripts he reviewed, and the names and fields of specification of those whose work he evaluated. 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, rather than submitting documentary evidence of his participation from 1998 to 2000, the petitioner instead submitted a brief letter written by his former supervisor attesting to his purported involvement in reviewing manuscripts some ten years earlier. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The December 8, 2009 letter from [REDACTED] does not comply with the preceding regulatory requirements. Moreover, [REDACTED] letter does not indicate if the petitioner was simply assisting his supervisor with manuscript reviews assigned by the above journals' editors to Dr. Sefton. The AAO notes that [REDACTED] March 26, 2009 letter to USCIS states that the petitioner "helped me to review scientific papers for publications in international journals." The record contains no review requests directly from the preceding journals' editors addressed to the petitioner as of the petition's filing date. 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 and assistance from his subordinate. In this instance, there is no documentary evidence establishing that the petitioner served as part of a formal judging process for the above journals.

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

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

The petitioner submitted several letters of support discussing his work.

[REDACTED]  
states:

As a [REDACTED] is currently working on the research and development of some important pharmaceutical products such as steroid drugs for hormone replacement therapy, oral contraceptive drugs, and the drugs for kidney diseases, among others. He is especially focused on development of new

analytical method for testing the pharmaceutical products and identification of unknown compounds in pharmaceutical products, which is critical to the development of pharmaceutical products for both existent and emerging diseases. Since pharmaceutical products contain many similar compounds and excipients, the analysis of the products are very difficult, especially for the analysis of some complex pharmaceutical products. [The petitioner] is making a mark in this difficult area of pharmaceutical research working to develop analytical methods for complex pharmaceutical products and as an expert in LC-MS and structure elucidation of unknown compounds. His research and development will contribute significantly to the development of our important pharmaceutical products.

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[The petitioner] has already made significant achievements in the three years he has worked here, including development of new analytical methods for our important products, determination of pharmaceutical compositions in new pharmaceutical products, and identification of unknown compounds, which is very important for our product development.

states that the petitioner's work is important to product development, but there is no evidence demonstrating that the analytical methods he developed while working for the company are recognized beyond his immediate employer such they constitute 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 particular research institution or employer. does not provide specific examples of how the petitioner's work at has substantially impacted others in the field or that it otherwise equates to original contributions of major significance in the field.

Cornell University, states:

[The petitioner] made significant contributions on the design and synthesis of the novel iron chelating polymers with higher iron chelating ability than siderophores. How to remove iron for the environment is the first and most challenging step in the iron removal strategy research. As microorganism can synthesize iron chelators, siderophores to acquire iron from their environment, it is necessary to have some iron chelating compounds with higher affinity for iron than siderophores. As the iron chelating polymers have desirable properties in iron chelating ability, selectivity, water-insolubility, stability and reusability, [the petitioner] found that iron can be selectively removed from the environment or media. [The petitioner] published his original contributions on synthesis and properties of the novel iron chelating polymers in top scientific journals such as the *Journal of Biomaterials Science-Polymer Edition*, *European Polymer Journal* and *Journal of Applied Polymer Science*.

In addition, [the petitioner] conducted novel studies on the biomedical applications of the iron chelating polymers, including the iron detoxification of human plasma for treatment of iron overload disease, in Vitro antibacterial activity for treatment of antibiotic resistant disease and malaria, removal of iron from milk and other nutrient media for inhibition of microbial growth in food, and selective removal of iron from grape juice for inhibition of yeast growth. Based on his broad research work, several papers were published in international scientific journals such as *Journal of Medicinal Chemistry*, *Journal of Dairy Science*, and *International Journal of Food Science and Technology*. These papers were also widely recognized and cited by other scientists around the world.

In the field of biomaterials, [the petitioner] also conducted novel studies in the adsorption/desorption of human proteins such as HDL (high density lipoproteins) on biomaterials, and their biomedical applications. Protein adsorption is an important tool in the study of blood compatibility of biomaterials. [The petitioner's] research on the adsorption of human proteins such as HDL provided some new information about the relationship between the protein adsorption and the hydrophilicity of the biomaterials. He was also one of the first scientists who directly visualized the adsorbed HDL with a tapping mode atomic force microscope (AFM). His work on this important research was published in two scientific papers which were extensively cited by other scientists.

As a Postdoctoral Research Fellow, [the petitioner] focused on research in biomaterials and micro-encapsulation of cells for two years at the University of Toronto, Canada. As micro-encapsulating of mammalian cells need biomaterials to encapsulate the cells and transplant the encapsulated cells into the body, the biocompatibility and other physiochemical properties are critical for the living of the cells after transplantation. With his strong skills in chemical synthesis, [the petitioner] significantly improved the synthesis of the biomaterials and developed new biomaterials for cell micro-encapsulation. This work was considered very important in cell micro-encapsulation, tissue engineering and biomedical science and published in several papers. In addition, [the petitioner] was invited to contribute an important chapter in the scientific book: *Methods of Tissue Engineering*.

In his 10 years of pharmaceutical industry experience, [the petitioner] made novel contributions in drug analysis, especially the development of new analytic methods for pharmaceutical products and identification of unknown compounds in pharmaceutical products, which was very important in the research and development of new drug products and in the control of the product's quality. Analytical methods are essential for the detection of unknown compounds because unknown compounds are in the mixture of similar compounds and/or in the pharmaceutical products that contain many other substances and inactive properties. With his broad knowledge and hands-on experience in chemistry and pharmaceutical science, [the petitioner] developed many novel and truly remarkable analytical methods to separate and analyze many unknown (novel) compounds in pharmaceutical products, such as Butorphanol nasal solution and ophthalmic products. This is reflected in his presentations and publications in conferences

and scientific journals such as the Pittsburgh Conference on Analytical Chemistry and Applied Spectroscopy and *The AAPS Journal* . . . .

With regard to [REDACTED] comments regarding the petitioner's published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO 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.<sup>7</sup> 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. Thus, there is no presumption that every published article or presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. In this instance, [REDACTED] does not provide specific examples of how the petitioner's findings and analytical methodologies are being applied by others in the field or that they otherwise equate to original contributions of major significance in the field.

Regarding [REDACTED] comments that the petitioner's work has been cited by other scientists, the petitioner's appellate submission includes citation indices from ISI Web of Knowledge indicating that 17 of his published articles have been cited by independent researchers more than one hundred times in the aggregate. For instance, the petitioner's two most frequently cited articles in *Journal of Applied Polymer Science* and *Journal of Colloid and Interface Science* had been independently cited to 15 and 22 times respectively as of the petition's April 23, 2009 filing date. The petitioner has not established that this moderate level of citation for the two preceding articles is indicative of original contributions of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. The phrase "major significance" is not superfluous and, thus, 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] pursued his bachelor's degree and master's degree in chemistry in the 1980s along with the petitioner at Wuhan University in China. [REDACTED] states:

In 1986, [the petitioner] obtained his first patent in China for his chemical synthesis invention. He discovered a new reaction method for the synthesis of polyethylene glycol

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<sup>7</sup> Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

diglycidyl ethers by phase-transfer catalysis. Polyethylene glycol diglycidyl ethers are broadly useful compounds. They are also very active in reacting further into other compounds or polymers, which makes it difficult to synthesize and separate them with a high yield. [The petitioner] innovatively used phase transfer catalysis to improve the yields of the reactions and made the separation much easier. His method was innovative and very useful for the synthesis of this type of the compounds.

In 1999, [the petitioner] was granted his second patent in the U.S. for his invention of novel polymeric coupling agents and related synthetic methods. While working on an industrial project for [REDACTED] [the petitioner] invented some polymeric coupling agents that have great industrial applications in the adhesion of macromolecules with metals. As the polymeric coupling agents have two types of functional groups for bonding the two surfaces, they have desirable properties for their applications.

In 1996, [the petitioner] filed for two patent applications with the Australian Patent Office for his work on metal removal and its biomedical applications. He essentially discovered that the growth of bacteria could be inhibited by removing the essential metals such as iron from their environment during his applied research at Panfida Technology. This discovery may lead to biomedical applications in treating diseases that are resistant to antibiotics as well as bacterial diseases such as malaria. Furthermore, it may also be applied to the inhibition of microbial growth in food products.

In 1999, [the petitioner] disclosed his research on biomaterials for patent applications in Canada and the U.S. At University of Toronto, he developed a novel synthetic method and synthesized several novel biomaterials that were very useful for the micro-encapsulation of cells. This invention may lead to application in tissue engineering and disease treatment, among other uses.

In 2008 at [REDACTED] [the petitioner] was able to determine the pharmaceutical compositions of natural conjugated estrogens with novel analytical methods, which was disclosed to [REDACTED] for a U.S. patent application. Natural conjugated estrogens are complex mixture derived from pregnant mare's urine and can be used as the drug for hormone replacement therapy. As the mixture contains a lot of unknown hormone compounds with biological activities and other inactive compounds, it is extremely difficult to determine the pharmaceutical compositions in the natural conjugated estrogens. [The petitioner's] research revealed the pharmaceutical compositions of the product with innovative analytical methods, which was very important for the research and development of the pharmaceutical product.

Regarding the preceding patents and patent applications referenced by [REDACTED] and submitted by the petitioner, the AAO has previously stated that 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, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this instance,



cells. [The petitioner] did a superb job of synthesizing new polymers to micro-encapsulate cells. He revised the synthesis of our standard hydroxyethyl methacrylate-methyl – methacrylate (HEMA-MMA) copolymer so that the polymer was less branched and more useful than before. He synthesized a number of different polymers with various purposes in mind – to make capsules with higher water contents and greater permeability, or to make capsules without hydroxyl groups so that complement was not activated or simply to make capsules that were less sticky. Not only did he synthesize the polymer, he characterized them chemically, measured their permeability and showed their utility in micro-encapsulating live cells. He successfully demonstrated extraordinary skills on synthesis of polymers and biomaterials.

Assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221. It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. Dr. Sefton praises the petitioner's skills in synthesizing new polymers, but he does not provide specific examples of how the petitioner's work at the University of Toronto impacted the field at large.

Primary Patent Examiner, United States Patent and Trademark Office, also pursued her bachelor's degree in chemistry in the 1980s along with the petitioner at Wuhan University. states:

The first contribution I would like to note is [the petitioner's] development of a new method to synthesize polymeric crown ethers (functional polymers) by one-step polymerization of some monomers. As polymeric crown ethers have selective complex properties and can be easily removed from chemical reaction mixtures, they are widely used in chemical separations and reaction catalysis. Normal synthesis of polymeric crown ethers need at least two steps, such as: synthesis of crown ethers, synthesis of polymers, and coupling the crown ethers into the polymers. [The petitioner] discovered a one-step polymerization to synthesize the useful polymeric crown ethers. In addition, he invented the synthesis method of polyethylene glycol diglycidal ethers by phase transfer catalysis. With this novel method, the useful polyethylene glycol diglycidal ethers can be easily synthesized with a high yield. This work resulted in a patent issuance by the China Patent Office in 1986.

The second contribution [the petitioner] made was the synthesis of iron chelating polymers/resins and their biomedical applications. He successfully synthesized some novel iron chelating polymers and studied their biomedical applications including the treatment of iron overload diseases, inhibition of microbial growth in food without preservatives, and potential treatment of antibiotic-resistant infectious disease and malaria. His work has thus contributed significantly to some disease treatments and food storage. He published more than 10 scientific papers in some top referenced journals such as *Journal of Medicinal Chemistry*, *Journal of Biomaterials Science*, *Polymer*

*Edition, Journal of Applied Polymer Science, and Journal of Dairy Science.* Based on his discoveries, two provisional patent applications were also filed with Australia Patent Office.

The third contribution [the petitioner] made was the synthesis of polymeric coupling agents and their applications in adhesion of macromolecular materials and metal substrates. He designed and synthesized the novel functional polymers, and found their use in adhesion of different materials, including rubbers and metals. This work was awarded a U.S. patent issued by our office in 1999, titled "Polymeric coupling agents for the adhesion of macromolecular materials and metal substrates" (No. 5,882,799).

The fourth contribution [the petitioner] made was the synthesis of novel polymers for microencapsulation of cells. [The petitioner] successfully synthesized new polymers with improved properties, such as blood compatibility and permeability for the microencapsulation of cells. The properties of the biomaterials are critical for keeping the cell live during the cell micro-encapsulation and after the transplantation of the microcapsules. His work has not only resulted in the publication of scientific papers but also contributed to an invention for a patent application in Canada.

The fifth contribution [the petitioner] made was the new analytical methods for pharmaceutical products, especially for the identification of unknown compounds in pharmaceutical products. He has developed many new analytical methods for the separation and identification of novel compounds in pharmaceutical products using some advanced techniques such as GC-MS (gas chromatography with mass spectrometer) and LC-MS (liquid chromatography with mass spectrometer). The novelty and usefulness of the methods can be exemplified in his methods for identification of unknown compounds in pharmaceutical products and determination of pharmaceutical compositions in natural drug products. His work has led to the identification of a number of unknown compounds in some important drug products, including Butorphanol nasal solution, Salbutamol Sulfate and natural conjugated estrogens. He has presented several papers in scientific conferences and disclosed an invention for U.S. patent application based on his original research.

█ lists five of the petitioner's research contributions from various projects to which he was assigned, but she does not provide specific examples of how the petitioner's work is being utilized by others in the field beyond his immediate projects. For instance, there is no documentary evidence indicating widespread medical or commercial implementation of the petitioner's iron chelating polymers or that they otherwise constitute contributions of major significance in the field. Regarding the petitioner's research publications, there is no evidence showing that any single article authored by the petitioner has been cited to more than 22 times as of the petition's filing date. As previously discussed, the petitioner has not established this moderate level of citation per article is indicative of original scientific contributions of major significance in the field.

University of Guelph, Canada, states that he served as in Australia. further states:

[W]e invited [the petitioner] to join one of our companies in Australia and offered him an Associate Research Director position

The novel strategy [the petitioner] developed with Panfida was based on the fact that yeast and bacteria need iron for their growth. Removal or deprivation of iron from their environment would result in the inhibition of the microbial and cellular growth, which would have very important applications in biomedical science . . . . [The petitioner] achieved a very high level of productivity and delivered innovative and excellent results. These included several promising candidate compounds which were retained for future aspects of our research . . . . [The petitioner] also worked in several very important research projects, such as inhibition of microbial growth in grape juice and synthesis of novel polymers for the treatment of antibiotic-resistant infectious diseases and malaria. His contribution was critically important to the success of the research, which led to the discovery of the novel strategy for inhibition of microbial growth and potential treatment of some diseases.

does not provide specific examples of how the petitioner's iron deprivation strategy for inhibition of microbial growth has been successfully commercialized by in the pharmaceutical industry or implemented by others in the field. Regarding the petitioner's employment with comments that the petitioner's work resulted in "several promising candidate compounds which were retained for future aspects of our research" and showed "potential" for treatment of some diseases. However, there is no documentary evidence showing that the petitioner's work at had already significantly impacted the greater field as of the petition's filing date so as to be considered a contribution of major significance. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Further, as previously discussed, 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 a particular company such as

continues:

[The petitioner] also took an active interest in the practical aspects pertaining to the use of the metal-chelating polymers to limit microbial growth and some parts of his research work led to the publication of three peer-reviewed manuscripts in prestigious internationally recognized scientific journals and one paper presented in an international conference. The following peer-reviewed published papers exemplify his important

original contribution to our research: (a) "Inhibition of yeast growth in grape juice through removal of iron and other metals," *International Journal of Food Science and Technology*, published in 1997 with [the petitioner] as first-author, (b) "Selective removal of iron from grape juice using an iron(III) chelating resin," *Separation and Purification Technology*, published in 1997 with [the petitioner] as first-author, and (c) "Synthesis and properties of a temperature-sensitive chelating hydrogel and its metal complexes," *Polymers for Advanced Technologies*, published in 1996 with [the petitioner] as sole author. His scientific results were also presented at prestigious international conferences, including the International Union of Pure and Applied Chemistry (IUPAC): *6th International Symposium on Macromolecule-Metal Complexes*.

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 scientist 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] discovered and synthesized novel polymers that can be used in the treatment of iron overload diseases, antibiotic-resistant infectious diseases and inhibition of microbial growth in food. He published his original findings on this research in 14 peer-reviewed papers as the first or sole author in the top international journals including the *Journal of Medicinal Chemistry* and the *Journal of Dairy Science*. His contributions in this area are not only scientifically significant but also practically remarkable in pharmaceutical and food industries.

[The petitioner] is also the inventor of two patents and four other inventions. These patents and inventions provided novel and useful materials and/or methods, which have significant impact in science and technology. For instance, his patent [REDACTED] entitled polymeric coupling agents for the adhesion of macromolecular materials and metal substrates was acquired by [REDACTED] and also cited by other inventors in five (5) different U.S. patents (issued from 2004 to 2008) in automobiles and medical devices. [The petitioner's] other invention of novel analytical method for the pharmaceutical compositions in a natural drug product is currently used in the development of important pharmaceutical products.

[REDACTED] does not provide specific examples of how the polymers developed by the petitioner for disease treatment and inhibition of microbial growth in food are being utilized in the pharmaceutical and food industries or that they otherwise constitute original scientific contributions of major significance in the field. Regarding the petitioner's patents, patent applications, and other inventions, there is no documentary evidence indicating widespread

medical, industrial, or commercial implementation of his innovations at the time of filing or that they otherwise equate to contributions of major significance in the field.

The AAO notes that all but two of the preceding references are the petitioner's current or former supervisors or Wuhan University alumnae. While letters from those who are close to the petitioner are important in providing details about his work on various projects, they cannot by themselves establish that his work is recognized beyond his circle of acquaintances. 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 research scientist 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 her field, the AAO 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 scholarly articles 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 that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner initially submitted project presentations and internal reports pertaining to his work at [REDACTED] as evidence for this regulatory criterion. While the preceding documentation shows the petitioner's activities for his employer, it fails to demonstrate that he performed in a leading or critical role for [REDACTED] and that his company has a distinguished reputation.

On appeal, the petitioner submits a letter from [REDACTED] of Analytical Research & Development, [REDACTED], stating:

[REDACTED] is a leading and distinguished specialty pharmaceutical company with more than 6,000 employees and \$2.5 billion revenue. We are using innovative science and market insight to develop responsive pharmaceutical products for

U.S. and the world. [REDACTED] established its distinguished reputation in the pharmaceutical industries as its products are ranked as the fifth in prescription sales nationwide.

[The petitioner] is [REDACTED] in our company. He is the authoritative expert we resort to in the analytical [REDACTED] for important and specific products related challenges with his extraordinary ability and background in chemistry. He oversees and supervises a group of scientists in various advanced research assignments and [REDACTED] initiatives at [REDACTED]. [The petitioner] is primarily responsible for several challenging [REDACTED] projects with millions of dollars investment, including the drug products for hormone replacement therapy and cancer treatment. In each and everyone of these projects, [the petitioner] takes the lead and is indispensable in his role. His scientific insight, engineering intuition, experimental design and execution, and analytical inventions are the key element and instrumental in our successful development of the most challenging and valuable pharmaceutical products to public health. It will cause irreparable damage and loss to our company if [the petitioner] ceases to work in the projects due to his legal residence status problem. He is also the only specialist in LC-MS (liquid chromatograph-mass spectrometer) analysis and one of the few top experts in organic chemistry at [REDACTED]. Therefore, his expertise is very critical to our success in the development of specific pharmaceutical products that are intended for improving the quality of life for patients around the world.

[REDACTED] states that [REDACTED] generates “\$2.5 billion” in revenue and that her company’s “products are ranked as the fifth in prescription sales nationwide,” but the record does not include documentary evidence to support her assertions. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The self-serving information provided in the letter from the petitioner’s superior at [REDACTED] is not sufficient to demonstrate that the company has earned a distinguished reputation. USCIS need not rely on self-serving documentation.<sup>8</sup> Further, there is no organizational chart or other evidence documenting how the petitioner’s position fell within the general hierarchy of [REDACTED]. For instance, [REDACTED] does not specify how many Senior Principal Scientists are employed by her company. The documentation submitted by the petitioner does not establish that he was responsible for the company’s success or standing to a degree consistent with the meaning of “leading or critical role.” Aside from the petitioner’s role for [REDACTED], the petitioner’s appellate submission does not include arguments or evidence addressing the petitioner’s leading or critical role for any other organizations or establishments with a distinguished reputation. As previously discussed, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the submission of evidence that the alien has performed in a leading or critical role for “organizations or establishments” in the plural. Therefore, even if the petitioner were to submit supporting

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<sup>8</sup> See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

documentary evidence showing that the petitioner's role and [REDACTED] reputation meet the elements of this criterion, which he has not, the plain language of this regulatory criterion requires evidence of a leading or critical role for more than one distinguished organization or establishment.

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

### *Summary*

In this case, the AAO concurs 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). Nevertheless, the AAO will review the evidence in the aggregate as part of its final merits determination.

### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, the AAO 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 the preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii) – (v) and (viii).

With regard to the category of evidence at 8 C.F.R. § 204.5(h)(iii), the petitioner submitted two 1994 articles in *Food Spectrum* and *University of Twente News*. As previously discussed, the English language translations accompanying these articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, there is no circulation evidence showing that *Food Spectrum* and *University of Twente News* qualify as professional or major trade publications or other major media. Further, there is no documentary evidence showing that articles have been published about the petitioner subsequent to 1994. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a researcher 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)(iii) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

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. As previously discussed, the five e-mails dated May 16, 2009 requesting that the petitioner review

abstracts 3690, 3904, 3304, 3311, and 3874 for the AAPS Annual Meeting 2009 post-date the petitioner's April 23, 2009 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. at 49. Regarding the two letters from the petitioner's former supervisor [REDACTED] stating that the petitioner helped review 6-12 manuscripts, the letters do not indicate the titles of the manuscripts reviewed, their specific dates of completion, and the names and fields of specification of those whose work the petitioner reviewed. The petitioner has not established that reviewing articles for a journal at the request of his immediate supervisor is indicative of sustained national or international acclaim at the very top of the field of endeavor. Moreover, the AAO notes that peer review of manuscripts is a routine element of the process by which articles are selected for publication 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 petitioner's filing date, the AAO cannot conclude that his level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. For instance, [REDACTED] resume states that he served on the editorial board of *Laboratory Robotics and Automation*.

Regarding the petitioner's original research findings discussed under 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). The report 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)..." *Id.* 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."

While the petitioner has published scholarly articles based on his research at the University of Toronto, Panfida Technology, the University of Twente, and Wuhan University, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on June 16, 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 <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.* Further, the OOH states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a

permanent college or university faculty position.” See <http://www.bls.gov/oco/pdf/ocos047.pdf>. 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 research articles in professional journals subsequent to 2000, conference papers subsequent to 2006, or book chapters subsequent to January 2007. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a researcher 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)(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 on appeal indicates that no single article authored by him had been cited to more than 22 times as of the petition’s filing date. This level of citation per article is not sufficient to demonstrate that the petitioner’s published work has attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies primarily on two articles from 1994 in publications whose circulation is not documented, undocumented manuscript reviews assigned to the petitioner by [REDACTED] at the University of Toronto, the petitioner’s publications and conference presentations, citation evidence showing that several of his articles from the 1990s have been moderately cited, two patents and four patent applications that have not been shown to have significantly impacted the field, his employment as a Senior Principal [REDACTED], and the praise of his references.

Moreover, many of the petitioner’s references’ credentials are far more impressive than those of the petitioner. For example, [REDACTED] states:

I am currently a full tenured professor in the Department of Chemistry and Biochemistry at California State University, Los Angeles, with an international reputation as an expert in chemistry and biochemical analysis. . . . Recognition of my research work and mentoring of postdoctoral and graduate students is reflected by the 2001 Dreyfus Teacher Scholar Award and my selection by the National Science Foundation as a panelist on the Graduate Research Fellowship and Chemistry Research Instrumentation and Facilities Programs. My research laboratory has been supported by grants from the National Institutes of Health, National Science Foundation, American Chemical Society, Department of Defense, and various private foundations and State agencies for a total of nearly 7 million dollars in the past 12 years. I have published close to 90 research papers.

[REDACTED] states:

I received my Sc.D. from the Massachusetts Institute of Technology (MIT) in 1974 and joined the University of Toronto directly thereafter when I was appointed to the Faculty of Applied Science and Engineering as an Assistant Professor in the Department of Chemical Engineering and Applied Chemistry. I became Assistant Chair of the Department in 1981, formerly served as Director of the Institute of Biomaterials and Biomedical Engineering, and was appointed as a University Professor (the highest level of distinction at the University). I am also a Founder and Chief Scientific Officer of [REDACTED], a biomaterials company based in Toronto, Canada. As a pioneer in biomaterials and biomedical engineering, my work on the development of pioneering procedures for microencapsulating mammalian cells for the purposes of cell transplantation and the preparation of materials that are compatible with blood has had a major international impact. I have authored more than 300 publications and 200 abstracts, hold 15 U.S. and international patents, and gave more than 350 invited seminars and scientific presentations in 20 countries. I sit on (or have sat on) the editorial boards of many journals, such as the *Journal of Biomedical Materials Research*, the *Journal of Biomaterials Science*, the *Journal of Controlled Release*, and *Biomaterials*. In 1988, I received the [REDACTED] from the Canadian Society for Chemical Engineering and was one of twenty given a Century of Achievement Award by that organization in 1999. I received the [REDACTED] and [REDACTED] from the U.S. Society for Biomaterials. In 2008, I received [REDACTED] most distinguished award given by the Canada Council for the Arts. As a University Professor, a Fellow of the Royal Society of Canada, a Fellow of the Chemical Institute of Canada and the Society for Biomaterials, and a Foreign Fellow of AIMBE (The American Institute of Medical and Biological Engineering), I have also served the biomaterials and biomedical community through my work on organizing committees and working parties of these Societies, NSERC (Natural Sciences and Engineering Research Council of Canada), MRC (Medical Research Council)/CIHR (Canadian Institutes of Health Research), and U.S. NIH (National Institutes of Health).

[REDACTED] According to a personnel announcement submitted by the petitioner, [REDACTED] provides managerial oversight and control of research and development functions at the [REDACTED] where the petitioner works. Previously, [REDACTED] worked at Barr Laboratories where he held positions such as Manager of Research and Development, Associate Director and Director of Research and Development.

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. 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 being among that small percentage at the very top of the field of endeavor.

### III. Conclusion

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

Review of the record 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.