identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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]

DATE: JUN 20 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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. 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, the petitioner argues that she meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v), (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
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

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

Id. at 1119-20.

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 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

---

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

II. Analysis

A. Evidentiary Criteria

This petition, filed on September 16, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner received from Ohio State University (OSU) in 2002. At the time of filing, the petitioner was working as a postdoctoral research associate in the laboratory of Investigator at the The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[2]

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

The petitioner did not initially claim eligibility for this regulatory criterion. In response to the director's notice of intent to deny (NOID), the petitioner submitted a June 2, 2008 article entitled . The conclusion of the article lists the petitioner along with five of her coauthors and states that it was "adapted from materials provided University of Pennsylvania School of Medicine." The author of the preceding article was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted an article entitled posted on the website of The Science Network. The date of this article was not identified as required by the plain language of this regulatory criterion. The article from only mentions the petitioner in passing and the article from never mentions her. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien."[4] None of the preceding articles is about the petitioner. Moreover, there is no online

---

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

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

[4] *See, e.g., Accord Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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). In this instance, the record lacks documentary evidence from the publications' editorial staff demonstrating that the petitioner meets the elements of this regulatory criterion.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, at 1228 n. 2. Accordingly, the petitioner has not established that she 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 letters of support discussing her graduate research at OSU under the supervision of , and her postdoctoral research at UPSM under the supervision of .

 states:

> I have known [the petitioner] since 1996 when she joined the graduate program at The Ohio State University. She joined my laboratory shortly thereafter and I have personally trained and supervised her during her graduate career.
>
> * * *
>
> While at this university, [the petitioner] was more specifically engaged in research on the role of specific loop regions with the flavin cofactor binding site that appeared to play an important role in the stabilization of an intermediate state of the cofactor that is central to the function of the two protein systems she was investigating. Her research provided definitive proof that conformational changes within these loops were tied directly to function. This work is of general interest in the field. All of her thesis research has been published in three excellent research articles, which is truly an extraordinary achievement.

Regarding reference to the petitioner's published research, 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. 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. Further, the AAO will not presume the impact of a given article from the reputation of the journal or conference proceedings in which it appeared. Rather, the petitioner must demonstrate the article's actual impact in her field.

In response to the director's NOID, the petitioner submitted citation indices from ISI Web of Knowledge indicating that her published work has been moderately cited. For instance, the petitioner's two most frequently cited articles in *Cell* and *Biochemistry* had been cited to 34 and 17 times respectively as of the petition's September 16, 2009 filing date. The petitioner has not established that this moderate level of citation 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. The AAO must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

, Assistant Professor, states:

> I have known [the petitioner] for over 6 years and have worked directly with her on several projects. Her input and technical skills were especially helpful with my research and resulted in much of that work being published in peer-reviewed journals. I have heard her present her findings at scientific conferences and have also reviewed her work, which I have found to be of exceptional quality. She has been primarily responsible for designing and developing a high-throughput assay to measure the function of the Survival of Motor Neurons protein (SMN), the protein that is mutated in Spinal Muscular Atrophy. She is applying this assay to large-scale screening of compounds to discover potential therapeutic drugs for Spinal Muscular Atrophy.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

states:

> [The petitioner] is credited with designing and carrying out a novel high-throughput screening (HTS) assay that opened the doors to designing novel approaches for the treatment of SMA [Spinal Muscular Atrophy]. Her highly specialized approach helped identify several compounds that led to the discovery of a new function of the SMN

protein. One such class of compounds that were identified by this high-content high-throughput immunofluorescence assay was a class of protein synthesis inhibitors, which altered the localization of the disease-causing SMN protein within the cell. This initial discovery further led to the identification of a novel function of the SMN protein and its interacting partners in protein synthesis. Furthermore, her mastery of the complex biochemical techniques led [the petitioner] to discover that various cell stress signals regulate not only the function but also the localization of the protein. These findings represent remarkable advances for the national scientific community and to the therapeutics of SMA. Her work in this area resulted in the development of a novel method of discovery for inhibitors of the clinically relevant p38 MAPK pathway. Inhibitors of these have been utilized for the treatment of several inflammatory diseases, namely rheumatoid arthritis. She discovered a novel inhibitor with not only a unique structural scaffold but also possibly a unique mechanism of action. She is currently in the process of identifying the direct target of this inhibitor by conducting a high-content RNAi based screen.

In addition to her major contributions towards developing potential treatments for SMA, [the petitioner] is also credited with major advancements of the methods through which SMA research is performed. Using the immunofluorescence assay, [the petitioner] developed the first automatic assay system that is capable of simultaneously visualizing as well as actually measuring SMN levels within a single cell. [The petitioner's] assay allows direct measurement of SMN levels in patient cells that can help evaluate the effectiveness of the potential therapies for SMA. Her continued research in identifying and characterizing novel compounds will provide potential treatment methods for SMA.

With over 10 years of experience in biochemistry and molecular biology, [the petitioner] is one of only a handful of experts in the field with expertise in biochemistry and immunofluorescence, as well as high-content and high-throughput assays.

At the conclusion of his letter, [redacted] comments on the petitioner's expertise in biochemistry, molecular biology, and immunofluorescence. Assuming the petitioner's skills and expertise 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. 215, 221 (Commr. 1998). In order to establish eligibility for this regulatory criterion, the petitioner must establish that her skills and expertise have already resulted in original contributions of major significance in the field. [redacted] does not provide specific examples of how the petitioner's original findings have significantly impacted the field at large or otherwise equate to scientific contributions of major significance in the field.

[redacted] Department of Neurology, OSU, states that he worked as a postdoctoral fellow in the laboratory of [redacted] at UPSM for five years. [redacted] further states:

> I have had the pleasure of knowing [the petitioner] for 6 years, and have worked directly with her on several projects.
>
> * * *
>
> [The petitioner] has developed a novel high-content high-throughput screening (HTS) assay which is the first automatic assay system that can simultaneously visualize the localization of SMN protein (i.e. its distribution between the cytoplasm and the nucleus of a single cell) as well as measure its amount. This is a significant contribution to the field as it allows direct measurement of SMN levels in patient cells and can be used to monitor the effectiveness of potential therapeutics for SMA. [The petitioner] is currently also leading a team of researchers in developing a single-step assay to measure SMN protein levels in different cell types. This will be a marked improvement over existing methods, and will reduce material costs and screening time. There is an urgent need for a single-step assay because it will allow researchers in academia and the pharmaceutical industry to rapidly and cost-effectively screen large compound libraries. Moreover, this type of assay has potential in a large number of diseases where target proteins are quantified such as cancer and neurodegenerative diseases.

does not provide specific examples of how the petitioner's HTS assay system for visualizing and measuring SMN protein is being applied by others in the field beyond UPSM and its immediate collaborators such as Regarding the petitioner's development of a single-step assay to measure SMN protein levels in different cell types, opines that the petitioner's work "will be a marked improvement over existing methods" and "will reduce material costs and screening time." He further comments that the petitioner's "assay has potential in a large number of diseases where target proteins are quantified." However, there is no documentary evidence showing that the petitioner's work had already significantly impacted the greater field as of the date of filing 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. 45, 49 (Regl. Commr. 1971). 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.

currently of the worked as a postdoctoral fellow in laboratory at UPSM from 1998 through 2002. states:

> I first met [the petitioner] in 2002 when she interviewed for a post-doctoral position in lab. . . . Since that time we overlapped many times at various SMA research meetings.
>
> * * *

> [The petitioner] has developed a novel high-content high-throughput screening assay, the first automatic assay system that can simultaneously measure the amount of SMN protein and visualize its localization (i.e., its distribution between the cytoplasm and the nucleus of a single cell). The SMN protein is a protein responsible for the disease. Quick and accurate measurement of its levels in SMA patient cells is critical to monitor the effectiveness of SMA therapeutics. [The petitioner] has already used the assay to identify and validate promising small molecules from large compound libraries that can potentially be used for development of new SMA therapeutics. Her technology is certain to become a popular tool outside the SMA field, since it is directly applicable to any disease with a known protein target to which antibodies are available (such as Fragile X syndrome).

does not provide specific examples of how the petitioner's research findings have influenced others in the field or are being applied in their work. Further, there is no documentary evidence showing that the petitioner's HTS assay system is frequently cited by independent researchers or that her innovation otherwise equates to an original scientific contribution of major significance in the field.

states:

> At we actively seek collaborations with highly talented academic researchers such as [the petitioner], who is currently in the laboratory of at the University of Pennsylvania School of Medicine. Since the initiation of this collaboration, I have interacted frequently with [the petitioner] and I have become familiar with her work through the monthly meetings held for the project.
>
> * * *
>
> [The petitioner] and her colleagues developed model cells from a patient with SMA, which our group is using to screen compound libraries, with the aim of finding treatments for SMA. She has designed a high-content high-throughput screening assay that simultaneously measures SMN and records an image of its cellular distribution, in each sample. We used this assay in ultra high-throughput format to monitor the effectiveness of potential lead compounds from our primary screens. This allowed us to perform in weeks what would have taken us years using other methods. We could rapidly validate our lead compounds and rank them in order of effectiveness, as well as eliminate "false positives." In particular, the novel feature of visualizing SMN greatly aided our selection criteria, as we could immediately discard those compounds that caused gross mis-localization of the protein within cells.
>
> [The petitioner's] expertise has been invaluable to our drug discovery effort. In addition to using her assay, we also relied on her advice when selecting the lead compounds from the screen. I am personally very excited by the results of the screen, as the effect of several of the compounds in increasing SMN levels has been confirmed and validated by

> numerous separate measurements. Currently, we are at the lead compound development stage, and we continue to rely on her guidance at this crucial stage in our research.

states that his research team at used the petitioner's HTS assay in collaboration with laboratory, but there is no evidence demonstrating that the petitioner's work is recognized beyond this project such that her work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to a particular research institution and its collaborative partner. While the petitioner's assay system improved screening efficiency for monitoring certain compounds in an effort to find treatments for SMA, there is no evidence showing that her work equates to an original contribution of major significance in the field.

at the Center for Technology Transfer, University of Pennsylvania, states:

> I evaluate the commercial potential of inventions arising from laboratory investigations, create effective patent prosecution strategies to protect useful inventions, and license technology and/or associated intellectual property rights to partners in the commercial sector for the advancement of said inventions . . . .
>
> I have submitted numerous patent applications and have been personally responsible for the ones from [the petitioner]. While both her patents, a method for testing and screening protein synthesis inhibitors as well as a method for testing and screening p38 MAP Kinase modifiers was filed in early 2007, they were both only recently internationally published in December 2008. Both of these have considerable value, especially for the treatment of cancer and inflammatory diseases. Her experience in this research area is remarkable and it has been a pleasure working with her. She was quick to catch even minor mistakes in the application.

In support of comments, the petitioner submitted documentation indicating that she and filed two patent applications in 2007 that were published in December 2008. Even if the petitioner were to establish that the preceding published applications resulted in patents, which she has not, the grant of a patent demonstrates only that an invention is original. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this instance, there is no documentary evidence indicating widespread medical or commercial implementation of the petitioner's testing and screening methods at the time of filing or that they otherwise constitute contributions of major significance in the field.

Facility, University of Pennsylvania, states:

> In a collaborative effort with , [the petitioner] identified a number of drug candidate compounds using a novel high-content high-throughput screen. One such compound was unstable, and decomposed to a smaller structure, presumably the active compound within the cell. She decided to determine the structure of this compound, as this information might prove advantageous to the drug synthesis process. I have served as consultant in this effort, as the structure is being determined using NMR. I have been greatly impressed to witness [the petitioner] prepare the compound for NMR through an elaborate series of steps, that combine biochemistry (several rounds of column purification) with cell biology (activity measurements using one of her unique assays). It is no simple task, and only her cross-disciplinary expertise has allowed her to succeed.
>
> We have now completed 1- and 2-dimensional NMR on this compound, and are close to describing its structure. It has been an exciting opportunity to work on this project, as a potential drug for SMA would be a great breakthrough for disease research.

 describes his and the petitioner's collaborative work with but he does not provide not provide specific examples of how the petitioner's work has notably influenced others in the field or otherwise constitutes original contributions of major significance the field.

 of the , Department of Chemistry, University of Pennsylvania, states:

> I have collaborated with [the petitioner] on her project to identify the specific mass of a potential lead compound for the treatment of Spinal Muscular Atrophy, obtained from her high-throughput high-content screen done in collaboration with This compound was of interest, as it fully corrected the "splicing defect," a hallmark of cells from patients with SMA. This compound decomposed in solution, while still maintaining activity. A smaller, yet active, compound decreases the cost and time for chemical synthesis by several orders of magnitude. Therefore [the petitioner] thought it critical to identify the structure of the decomposition product.
>
> [The petitioner] optimized a method for isolation of the product, which required a strong understanding of biochemical techniques, as well as of cell biology. In order to determine structure by nuclear magnetic resonance (NMR), she proceeded in a stepwise, logical fashion; first starting with the exact mass obtained by mass spectrometry. This gave her the elemental composition of the compound, which allowed her to use modeling software to derive at a small number of possible structures. This in turn facilitated eventual structure determination by NMR.
>
> This ability to combine different biochemical techniques is a hallmark of a true biochemist. . . . Such expertise is precious, and it is my professional opinion that [the petitioner's] outstanding abilities as a biochemist as well as a cell biologist make her indispensable to our science.

It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his or her field in order to meet this regulatory criterion. describes the petitioner's work and praises her expertise, but he does not provide specific examples of how the petitioner's work at UPSM has impacted the field at large.

The AAO notes that the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's work on various projects, they cannot by themselves establish that her work is recognized beyond her professional 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 scientific 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 her field, the AAO cannot conclude that she 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 her authorship of seven scholarly articles that were published as of the petition's filing date and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets this criterion.

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

The petitioner submitted documentation showing that she presented her work at various scientific meetings and conferences as evidence for this criterion. The petitioner's field, however, is in the sciences rather than the arts. The plain language of this regulatory criterion indicates that it applies to artists. *See Kazarian,* 596 F. 3d at 1122 (in which the 9th Circuit determined that it is neither arbitrary, capricious, nor an abuse of discretion to conclude that scientific presentations at scientific conferences do not qualify as display of the petitioner's work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii)). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's presentations at scientific meetings and conferences are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that she has already met.

In light of the above, the petitioner has not established that she meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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 her graduate research at OSU under the supervision of and her postdoctoral research at UPSM under the supervision of While the petitioner has performed admirably on the research projects to which she was assigned, there is no evidence showing that her subordinate roles were leading or critical for the preceding universities. For example, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the general hierarchy of her research institutions. The AAO notes that the petitioner's role at OSU was that of a student. Moreover, the petitioner's current postdoctoral appointment at UPSM is designed to provide specialized research experience and training in her field of endeavor.[5] The petitioner's evidence does not demonstrate how her temporary appointments differentiated her from the other research scientists employed by the preceding institutions, let alone their tenured faculty and principal investigators. The documentation submitted by the petitioner does not establish that she 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 she meets this criterion.

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

The petitioner submitted a University of Pennsylvania pay statement for September 2009 indicating that she earns a monthly salary of $4,458.33 or $53,499.96 annually. The petitioner also submitted "Salary Guidelines" for Postdoctoral Scholars from Stanford University's website. The "Salary Guidelines" list the National Institutes of Health (NIH) *minimum* annual pay level for a postdoctoral scholar with 7 years of research experience as $51,552. The AAO notes that the petitioner's salary is less than $2,000 above the NIH "minimum" pay level. The plain language of this regulatory criterion requires evidence of "a high salary or other significantly high remuneration for services, *in relation to others in the field.*" [Emphasis added.] A minimum pay level established by the NIH for postdoctoral scholars is not a proper basis for comparison. The petitioner must submit evidence showing that she has earned a *high* salary or other *significantly high* remuneration in relation to others in her field (including tenured research professors), not simply a salary that is above the minimum level for postdoctoral researchers. The petitioner's attempt to use minimum salary guidelines and to exclude the salaries of research professors in her field does not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field." *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering a professional golfer's earnings versus those of the top earners in the United States Professional Golfers' Association Tour). The evidence submitted by the petitioner

[5] "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." *See* http://www.bls.gov/oco/pdf/ocos047.pdf, accessed on May 27, 2011, copy incorporated into the record of proceedings.

does not establish that she has received a high salary or other significantly high remuneration for services in relation to others in the field as of the petition's filing date.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned and will not further discuss it on appeal. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that she meets this criterion.

Summary

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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, 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)(iii) – (ix), .

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. Aside from the petitioner's failure to submit documentary evidence originating from the publications' editorial staff designating the petitioner as a reviewer, establishing that she completed the reviews, or specifying their dates of completion, the AAO cannot conclude that the petitioner's level and frequency of peer review (only four manuscripts) is commensurate with sustained national or international acclaim at the very top of the field of endeavor. 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 her field, such as evidence that she has received and completed independent requests for review from

a substantial number of journals or served in an editorial position for a distinguished journal, the AAO cannot conclude that her 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, Dr. resume states that he has served on the editorial boards of six journals.

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 cardiology 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."

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

While the petitioner had published seven scholarly articles at the time of filing based on her research at OSU and UPSM, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at www.bls.gov/oco on May 27, 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.

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 her body of work has been moderately cited as of the petitioner's filing date. This level of citation is not sufficient to demonstrate that the petitioner's articles have attracted a level of interest in her field commensurate with sustained national or international acclaim at the very top of her field.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(ix), the petitioner submitted evidence indicating that her salary is less than $2000 above the NIH *minimum* annual pay level for a postdoctoral scholar with 7 years of research experience. The petitioner, however, must submit evidence showing that her salary places her among that small percentage at the very top of the field rather than simply above the minimum level for those with the same number of years of experience. *See* 8 C.F.R. § 204.5(h)(2). Minimum pay guidelines are not an appropriate basis for comparison in demonstrating that a salary that is indicative of or consistent with 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. At the time of filing, the petitioner was working at UPSM as a postdoctoral research associate. The petitioner relies primarily on four manuscript reviews, seven research articles published prior to the petition's filing date with her research supervisors [redacted] and [redacted] citation evidence showing that her work has been moderately cited, several conference presentations with [redacted], two published patent applications with [redacted] the praise of her current and former colleagues, and the affirmation of her colleagues that her work is important to UPSM where she works in an inherently temporary position.

Many of the petitioner's references' credentials are far more impressive than those of the petitioner. For example, [redacted] states that he is a tenured faculty member in the Department of Biochemistry at OSU. He further states:

> My research has been funded almost continuously for about 20 years, primarily from the National Institutes of Health. My research group and I have published >60 research articles in some of the top peer-reviewed biochemical journals. . . . I have served as the thesis advisor for 20 graduate students and have supervised research projects for numerous undergraduate students. I also serve as instructor for undergraduate- and advanced graduate-level courses . . . . In addition, I served as Chair of the Department of Biochemistry, a position held since July 1, 2000 for 8 years . . . .

Furthermore, [redacted] resume indicates that he served as co-editor [redacted] and performed peer review for more than a dozen distinguished journals.

[redacted] is the [redacted] Investigator at [redacted] His resume states that he is an Elected Fellow of the American Academy of Arts and Sciences and an Elected Member of the European Academy of Sciences. Further, [redacted] has served on the editorial boards of *RNA*, *Molecular Cell*, *Experimental Cell Research*, *Cromosoma*, *The New Biologist*, and *Molecular and Cellular Biology* and authored 177 publications.

. According to his resume, has authored more than twenty publications and 17 abstracts.

While the petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought, it appears that the very top of her field of endeavor is far above the level she has attained. In this case, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a research scientist, or 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 herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.