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



**U.S. Citizenship  
and Immigration  
Services**



B2

DATE: JUN 23 2011

Office: NEBRASKA 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:

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

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 submits a statement. For the reasons discussed below, the AAO upholds the director’s findings.

## **I. Law**

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

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

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

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

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

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

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

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

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

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

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

F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria<sup>2</sup>

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

On appeal, the petitioner notes that some articles have referenced the conformer or conformation he worked out by his last name. The petitioner asserts that "it is the greatest honor for a scientist to name a scientific concept after his name." The petitioner references the naming of element 106 as [REDACTED] in honor of Nobel [REDACTED] and notes that at the ceremony [REDACTED] stated that it was a greater honor than the Nobel Prize.

The record contains three articles that reference the conformer or conformation by the petitioner's last name. The first of these articles is by the petitioner's own coauthor, [REDACTED]. Two of [REDACTED] coauthors authored the second article. The final article appears to be an independent use of the term.

There is a finite number of elements and the majority of them are not named after individuals. The petitioner has not documented that the single independent use of the petitioner's last name in the literature to describe a conformer or conformation he reported is remotely similar to having a scientific body name an element after an individual. Significantly, [REDACTED], asserts that the International Union of Pure and Applied Chemistry (IUPAC) has not adopted the petitioner's name for this conformer or conformation. The record suggests there are three classes (including the petitioner's) of conformations for ferrocene peptides. The record does not, however, contain evidence regarding the total number of conformers or conformations overall. The record also lacks evidence of the frequency and significance of referencing conformers or conformations by the name of the researcher who reported the conformer.

The record contains no evidence suggesting that reference to a conformer or conformation by the petitioner's last name in the literature is a prize or award for excellence in the field of chemistry.

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

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

*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.*

The petitioner submitted evidence of his membership in Sigma Xi and the American Chemical Society (ACS). In response to the director's request for additional evidence, the petitioner submitted evidence that ACS requires only an earned baccalaureate or higher degree in a chemical field or relevant experience. These are not outstanding achievements.

The petitioner also submitted evidence that Sigma Xi is open to those who demonstrate a "noteworthy achievement." The petitioner did not submit evidence regarding how Sigma Xi defines a "noteworthy achievement." Achievements that an honor society might consider "noteworthy," for example primary authorship of two published papers, are not outstanding achievements in the sciences.<sup>3</sup> Moreover, the petitioner did not submit evidence that recognized national or international experts judge the achievements of prospective members.

Even if the AAO were to conclude that Sigma Xi is a qualifying membership, and the AAO does not make such a finding, it is only one membership. The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in qualifying associations in the plural, consistent with the statutory requirement for extensive documentation. 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 in a regulation.<sup>4</sup>

On appeal, the petitioner merely asserts that he included the above memberships because he is aware of "many successful EB1a applicants claimed" these memberships. Those petitions are not before the AAO and could also have included qualifying evidence under three other criteria. Each petition is evaluated based on the evidence of record. The evidence of record in this matter does not establish that the petitioner is a member of associations that requires outstanding achievements of their members as judged by recognized national or international experts.

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<sup>3</sup> These are, in fact, the only requirements for Sigma Xi membership. See [www.sigmaxi.org/member/join/qualification.html](http://www.sigmaxi.org/member/join/qualification.html).

<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).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(ii).

*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.*

On appeal, the petitioner singles out two articles that he asserts constitute published material about him. While he acknowledges that he is not named in the second article, he notes that the articles reference the colleagues of [REDACTED] with whom the petitioner worked. The petitioner notes that [REDACTED] provided a letter confirming the petitioner's contribution to the project discussed in the second article.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material about the alien's work).

The first article presents "a rigorous nomenclature" for ferrocene peptide conjugates and then summarizes and categorizes the structures. It discusses both [REDACTED] and contains 35 footnotes, of which the petitioner's article is merely one. This article cannot be considered to be published material about the petitioner relating to his work.

The second article, while about a project on which [REDACTED] confirms the petitioner worked, does not mention the petitioner by name and cannot be considered to be about him and relating to his work.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

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

The director, relying in part on the number of citations in the aggregate, concluded that the petitioner meets this criterion. As an experienced researcher is likely to have published several articles, however, the number of citations per article is typically more informative than the total number of citations in the aggregate. Nevertheless, based on the letters supported by a pattern of moderate to frequent citation and the use of the petitioner's last name in the trade literature to reference a conformation he reported, the AAO concurs with the director's conclusion.

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 phrase "major significance" is not superfluous and, thus, has some meaning.

To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The petitioner submitted several published articles in professional journals. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.<sup>5</sup> The petitioner also submitted evidence of a pattern of moderate to frequent citation. This citation level is at least consistent with contributions of major significance to the field. As discussed above, at least one independent research team has referenced the conformer or conformation the petitioner reported by the petitioner's last name.

██████████ formerly a professor at the University of Saskatchewan, asserts that the petitioner joined ██████████ group as a postdoctoral researcher in ██████████ and was instrumental in developing our research program on ██████████” ██████████ continues:

In his research, [the petitioner] focused on the synthesis of electrochemical biosensors that enable the facile detection of diseases, monitoring air quality, and detection of bacterial contamination in foods. In addition to their versatility, such technology offers the benefit of being fast, easy to use, and inexpensive.

Based on our group's previous research, we designed disubstituted ferrocenes as new biosensors aiming to detect a range of proteins involved in the viral cycle of the HIV-1 virus. [The petitioner] designed a new structural type of unsymmetrically substituted ferrocene peptide conjugates. Since no synthetic strategy existed that enabled their synthesis, [the petitioner] developed a feasible method that allowed him to introduce peptide substituents selectively into individual positions. [The petitioner's] excellent synthetic skills and outstanding research abilities were essential for the success of this project and he quickly developed the necessary methodology and obtained a sizable quantity of this biosensor material.

██████████ notes that the petitioner published this work and asserts that ██████████ and “many around the world” are using the petitioner's methodologies. The petitioner's two articles coauthored with Dr. ██████████ both published in 2001 had each garnered a notable number of citations as of the date of filing and continue to garner citations.

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<sup>5</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.

██████████ a professor at the University of Saskatchewan, confirms that the petitioner served as a postdoctoral researcher in ██████████ laboratory in ██████████ states that the petitioner “made important contributions to the synthesis of isotopically labeled metabolites and devised methodologies than [sic] were essential to the success of those chemical transformations.” ██████████ notes that the petitioner published two articles reporting this work. One of those articles has garnered moderate citation.

██████████ at ██████████ explains that he has known the petitioner since 2008 when he joined ██████████ asserts that the petitioner is working on synthesis of compounds with position specific stable isotope labels. ██████████ states that the petitioner “successfully synthesized a serial of compounds which are stable isotope labeled analogs of lamine” and that because of these products, “trace detection of melamine in milk and diary [sic] products became practical in NIH and FDA laboratories.”

The above evidence adequately supports the director’s conclusion that the petitioner has submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(v).

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

The petitioner submitted several published articles in professional publications. Thus, the petitioner has submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(vi).

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

Initially and in response to the director’s request for additional evidence, the petitioner claimed to have performed in a leading or critical role for ██████████. The petitioner reiterates this claim on appeal. The petitioner has never claimed to have performed in a leading or critical role for a second organization or establishment. The regulation at 8 C.F.R. § 204.5(h)(3)(viii), however, requires evidence of a leading or critical role for organizations or establishments in the plural, consistent with the statutory requirement for extensive documentation. Section 203(b)(1)(A)(i) of the Act.

Initially, the petitioner submitted a letter from ██████████ Director of Scientific Affairs at ██████████ asserts generally that the petitioner was “a critical member of the ██████████ team and helped strengthen ██████████ scientific excellence.” USCIS need not accept primarily conclusory assertions.<sup>6</sup> Moreover, merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.<sup>7</sup>

<sup>6</sup> *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

<sup>7</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

More specifically, [REDACTED] asserts that [REDACTED] Research provides chemical reference standards and synthesis services to the pharmaceutical and related industries and has a reputation “known through the industry.” [REDACTED] asserts that the petitioner made significant contributions to that reputation. [REDACTED] continues:

As a research scientist in the R&D Department, [the petitioner] was responsible for developing new methods and synthesizing new products. Most projects were multi-step syntheses of isotopically labeled pharmaceuticals. Isotopically labeled pharmaceuticals and metabolites are important compounds used as internal reference standards in bioanalytical studies on pharmaceutical drugs.

[REDACTED] explains that the petitioner successfully completed more than 40 new synthesis projects, resulting in his promotion to Research Manager of the [REDACTED] Laboratory.

In response to the director’s request for additional evidence, the petitioner submitted two new letters from [REDACTED] Research employees: [REDACTED] Chief Operating Officer, and [REDACTED] Manager of Analytic Service. Both letters affirm that the petitioner played a critical role at the company. As stated above, USCIS need not accept primarily conclusory assertions and letters that merely repeat the language of the statute or regulations do not satisfy the petitioner’s burden of proof.<sup>8</sup> The letters discuss the petitioner’s supervision of young chemists, solutions for chemical problems and suggestions for achieving project targets.

As evidence of [REDACTED] Research’s distinguished reputation, the petitioner submitted materials from the company’s own website and an advertisement posted on [REDACTED]. These self-promotional materials cannot establish how the pharmaceutical industry perceives [REDACTED] Research’s reputation.<sup>9</sup>

The petitioner failed to provide an organizational chart demonstrating how the petitioner’s role as a manager at [REDACTED] Research fits within the overall hierarchy of the company. Thus, he has not established that he played a leading role for [REDACTED] Research.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the petitioner demonstrate a leading or critical role rather than just employment for a qualifying employer. If the word “critical” is to have any meaning, it must go beyond the fact that the petitioner performed services that were important to the employer. Specifically, an employer would not bother to hire someone to perform services that the employer does not require.

<sup>8</sup> *1756, Inc.*, 745 F. Supp. at 1; *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at \*5.

<sup>9</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).

While [REDACTED] asserts that the petitioner contributed to [REDACTED] Research's reputation, the record does not contain annual reports confirming an increase in business coincident with the petitioner's discoveries at that company. The record also lacks corroboration in the trade media, such as news coverage of notable accomplishments at [REDACTED] Research to which his colleagues have confirmed his contribution. Finally, the record lacks any similar evidence confirming the petitioner's critical role with [REDACTED] Research and its reputation in the industry.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii), which is worded in the plural.

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

While the petitioner has never claimed to meet this criterion, the AAO notes that the record contains evidence that the petitioner's current employer, [REDACTED] offered the petitioner a starting salary of \$70,000. The petitioner also submitted pay statements reflecting a biweekly gross salary of \$2,692.31, which annualizes to \$70,000. The record, however, contains no evidence that this salary is high in relation to others in the field.

#### *Summary*

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

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

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

As stated above, the petitioner has authored scholarly articles. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the field's response to these articles may be and will be considered in the final merits determination. The petitioner has documented a pattern of notable citation. Only a major nationally or internationally recognized award, however, can serve as the sole evidence of eligibility. Thus, while the petitioner's citation record is notable and indicative of both a notable

publication record and contributions, it is not, by itself, sufficient evidence to establish national or international acclaim.

Due to the petitioner's citation record and the references to the petitioner's conformer or conformation by his last name in at least one independent article, the AAO did not withdraw the director's finding that the petitioner has made contributions of major significance. That said, it is notable that the petitioner failed to provide any letters from researchers who have not worked with the petitioner and are aware of his work through his reputation alone. Acclaim requires recognition beyond the petitioner's immediate circle of colleagues.

The remaining evidence, in addition to not meeting the plain language requirements of the regulations quoted above, is not indicative of or consistent with national or international acclaim or status among the small percentage who have risen to the very top of the field. The associations of which the petitioner is a member require only education, experience or publication for membership. These accomplishments do not set the petitioner apart from the vast majority of scientists.

The petitioner's own supervisor authored the review that discusses the petitioner's conformer at length and the single article that discusses the petitioner's work on an HIV biosensor does not mention him by name. This published material is simply not indicative of or consistent with national or international acclaim. Specifically, acclaim requires recognition beyond one's supervisor and name recognition.

The petitioner clearly progressed in his career, moving from a research position to a manager position at ██████████ Research. While this progression demonstrates increasing responsibilities at this company, it is not indicative of or consistent with national or international acclaim or status among the small percentage who have risen to 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. While the petitioner did not submit the curriculum vitae of his references, some of them list their accomplishments in their letters. ██████████ ██████████ has authored 150 articles and serves on two editorial boards. ██████████ another of the petitioner's references who discusses his work in China, serves on an editorial board, has published more than 90 articles and holds two patents. ██████████ is the ██████████ and Agricultural Chemistry and has published over 130 articles and book chapters. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

### **III. Conclusion**

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

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.