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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

FILE:

Office: TEXAS SERVICE CENTER

Date:

MAR 03 2011

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. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

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

I. Law

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 March 31, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist specializing in virology. The petitioner received her Ph.D. in Microbiology from Arizona State University (ASU) in August 2007. 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 submitted [REDACTED] press release issued by ASU and posted at Physorg.com, MedicalNewsToday.com, News-Medical.net, ScienceDaily.com, CuringDeath.com, Bio-Medicine.org, EurekAlert.org, and the ASU Biodesign Institute's website. This press release was prepared by [REDACTED] Media Relations Manager and Science Editor, ASU, and then provided to the preceding websites. A press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value rather than "published material . . . in professional or major trade publications or other major media." We cannot conclude that a press release, which is not the result of independent media reportage and which is sent to media outlets to encourage them to develop articles on a subject, meets the plain language of this regulatory criterion. Nevertheless, the preceding two-page article only includes two sentences mentioning the petitioner and instead focuses on her supervisor [REDACTED], [REDACTED], ASU. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien." Further, there are no internet readership statistics or other comparable evidence showing that that Physorg.com, MedicalNewsToday.com, News-Medical.net, ScienceDaily.com,

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.

CuringDeath.com, Bio-Medicine.org, EurekAlert.org, and the ASU Biodesign Institute's website equate to professional or major trade publications or other major media.

The petitioner also submitted copies of thirty scientific articles citing to her work. Almost half of the submitted articles were published subsequent to the petition's March 31, 2008 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 the articles published after March 2008 in this proceeding. Nevertheless, articles which cite to the petitioner's work are primarily about the author's own work, and are not about the petitioner or even her work. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." The submitted articles do not discuss the merits of the petitioner's work, her standing in the field, any significant impact that her work has had on the field, or any other information so as to be considered published material about the petitioner as required by this criterion. Moreover, we note that the submitted articles citing to the petitioner's work similarly referenced numerous other authors. The research articles citing to the petitioner's work are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In light of above, the petitioner has not established that 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 Ph.D. research at ASU under the supervision of [REDACTED]

[REDACTED]
in the School of Life Sciences at Arizona State University, states:

[The petitioner] worked in [REDACTED] lab in our department, and I have known her since she joined our center in [REDACTED]. In the beginning, [the petitioner's] research was focused on coronavirus budding and assembly. She used the novel full length infectious system to construct mutant viruses, and discovered the important role of the envelope protein of coronavirus in virus budding and assembly. Furthermore, she also identified this envelope protein functioning as a viroporin, providing new insight of this emerging area as novel strategy for virus therapy. More interestingly, by introducing mutation at different position of this protein, four importance [sic] amino acids and their position have been identified as the key motif of the protein activity. Thus, it provides an important target for small molecule design for drug development. Since the outbreak of SARS coronavirus, [the petitioner] has been conducting an exciting investigation on invasion of coronavirus in host innate immune response. Her finding of interferon resistance characteristics of coronavirus was one of the leading reports in the coronavirus field. In addition to that, she is the first researcher who identified the virus interferon

antagonist and the involving mechanism. Thus, [the petitioner's] research has opened a new era in the treatment and vaccine development of SARS coronavirus.

Based upon what I have seen of her work, I believe [the petitioner] to be an extraordinary research scientist, who has already made some important contributions to science, and who will without doubt accomplish more. I am sure that [the petitioner's] recent findings about coronavirus assembly and identification of the coronavirus interferon antagonist in its interaction with the innate immune system will greatly highlight the research work in virology field around the world. The results of her work have been presented at several important national and international conferences, many of which have been selected as oral presentation, suggesting the significance of her work. The detailed results have been published in the prestigious academic journals *Journal of Virology* and in the book chapter.

The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner's scholarly articles under the next criterion.

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. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

[REDACTED], and founding director [REDACTED] states:

[The petitioner] has been doing research in [REDACTED] Lab in CIDV for the past 5 years.... During her graduate study, [the petitioner] conducted very challenging research on a group of infectious viruses. She focused on viral-infectious disease study, specialized in coronavirus. During the year 2002, the outbreak of the life-threatening disease Sever Acute Respiratory Syndrome (SARS) caused around a thousand deaths worldwide and led to a huge economic loss. Since then, a new coronavirus, SARS coronavirus, has been identified as the origin. Through study of this virus' life cycle, [the petitioner] made significant contribution to the understanding of this novel virus, and

potential new strategies for its control. One of her achievements is the identification of a key motif of coronavirus that is responsible for the virus' assembly. The motif is defined by the position of four hydrophilic amino acids in the transmembrane domain of a small protein whose organization is critical in order for the whole virus particle to assemble. Due to [the petitioner's] unique perspective and insightful observation, she disclosed the importance of this motif through insightful experiments. This breakthrough not only helps understanding the new coronavirus, but also hugely contributes as a therapeutic target in small molecule [sic] design for drug development. The other big contribution of [the petitioner's] research is beyond virus itself. She revealed a nontraditional mechanism carried by coronavirus to interact with host innate immune response. During the SARS outbreak, while most scientists were trying to fight the virus with interferon, which was a traditional theoretical treatment, [the petitioner] proposed that the virus was resistant to interferon. By her hard work, she not only provided strong evidence to support her hypothesis, but also revealed the unique mechanism by which coronavirus takes to interrupt the interferon system, more importantly, she discovered the viral protein that is the interferon antagonist. . . . As an expert in the field of infectious disease, I can anticipate anti-coronavirus drug and vaccine development by applying [the petitioner's] discoveries, in the event a reoccurrence of SARS and emergence of new viruses.

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

[REDACTED] states:

I met [the petitioner] a couple of times at conferences such as the annual American Society of Virology meeting and I am convinced that she is a truly outstanding young scientist who has made substantial contribution in the field. In her paper called [REDACTED] which appeared in the *Journal of Virology*, [the petitioner], as a lead author, discovered that a viral protein may allow the virus to evade the immune system. This ground breaking finding has received strong international recognition. Many scientists at other independent research groups have cited her work.

As previously discussed, the petitioner submitted copies of 30 research articles citing to her work. A review of the submitted documents indicates that none of the petitioner's individual articles had been independently cited to more than a dozen times as of the petition's March 31, 2008 filing date. Moreover, almost half of the submitted articles were published subsequent to the petition's 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. Accordingly, the AAO will not consider articles published after March 2008 in this proceeding. Further, at least two of the submitted citations were self-citations by the petitioner's coauthor [REDACTED]. While a normal and expected process, the self-citations cannot demonstrate the petitioner's influence beyond [REDACTED] laboratory. On appeal, the petitioner submits a self-serving list of 42 purported citations that allegedly derives from Google Scholar. Twelve articles appearing on the petitioner's citation list are not documented in the record. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Counsel provides no explanation for why the petitioner did not submit the actual printout from Google Scholar. Nevertheless, even if we accepted the self-serving list of undocumented citations, no single article by the petitioner has garnered more than a dozen independent citations as of the petition's March 31, 2008 filing date. Ultimately, the citation record submitted by the petitioner is not indicative of contributions of major significance in the field.

[REDACTED] University of Leubeck, Germany, states that he met the petitioner at scientific conferences in which they participated. [REDACTED] further states:

[The petitioner's] work focused on coronavirus budding and assembly. She found the important role of the envelope protein of coronaviruses in budding. She also identified this envelope protein functioning as a viroporin. Her work provided new insight in this emerging area as a novel strategy for antiviral therapy. Since the outbreak of the SARS coronavirus, [the petitioner] has been investigating the intervention of the coronavirus with host innate immune response. She was the first scientist to identify a viral protein that may allow the virus to evade the immune systems. [The petitioner's] breakthrough has opened up a new approach into which others have followed. Many scientists have cited her work. Her articles have also become the subject of many review articles. She has become a sought-after expert in the treatment and vaccine development of SARS coronavirus.

As previously discussed, the citation evidence submitted by the petitioner indicates that no single article by her had garnered more than a dozen independent citations as of the petition's filing date. While the submitted documentation indicates that the petitioner has performed admirably on the various projects to which she was assigned, the evidence of record does not establish that her work constitutes original contributions of "major significance" in the field.

On appeal, counsel argues that the director disregarded the information contained in the letters of support. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those

letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of virology 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, we 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 four journal articles and a book chapter as of the petition's filing date and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

Summary

In this case, we concur 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, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii) and (v).

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). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." Research work that is unoriginal would

be unlikely to secure the petitioner a master's degree, let alone classification as a scientific researcher of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal." Moreover, there is no documentary evidence showing that the petitioner is responsible for any original contributions in virology research subsequent to her departure from ASU in August 2007. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(v) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

While the petitioner has published scholarly articles based on her graduate research at ASU, the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition, (accessed at www.bls.gov/oco on February 18, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* 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 www.bls.gov/oco/ocos047.htm. 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 authored scholarly articles based on research she conducted after her departure from ASU. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(vi) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. As previously discussed, the documentation submitted by the petitioner indicates that 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.

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 a press release distributed to various websites by ASU's Media Relations Manager in May 2007; four journal articles, a book chapter and seven conference presentations (all authored with her

graduate research supervisor [REDACTED] and citation evidence showing that her work has been moderately cited.

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

I am currently [REDACTED] in the Biodesign Institute and [REDACTED] at Arizona State University. . . . I have published over 265 peer-reviewed papers. Before my time at ASU, I was [REDACTED] at Washington University where I chaired the Department of Biology from 1983-1993. In addition to my academic pursuits, I founded [REDACTED] where I served as a member of the Board of Directors until 2000. Additionally, I have been issued numerous patents for my discoveries, including one for the use of recombinant avirulent *Salmonella*, *Escherichia* and *Salmonella-Escherichia* hybrids as antigen delivery vectors to induce mucosal, systemic and cellular immunity. I participate in a number of national and international activities as a member of the American Society for Microbiology, Society for General Microbiology, American Association of Avian Pathologists, American Academy for Microbiology (Fellow), American Association for the Advancement of Science (Fellow), International Society of Mucosal Immunology, St. Louis Academy of Sciences (Fellow), Arizona Arts, Science and Technology Academy (Fellow) and the National Academy of Sciences. I have served as a member of numerous grant review panels for the National Science Foundation, the Cystic Fibrosis Research Foundation, the National Institutes of Health and the US. Department of Agriculture. From 2000 to 2006, I chaired the Board of Executive Editors, *Escherichia coli* and *Salmonella: Cellular and Molecular Biology*, ASM Press and have served as Editor of the Journal of Bacteriology and Infection and Immunity.

[REDACTED] states:

As author of numerous publications focused on various aspects of plant-based vaccine technology, I have participated in numerous national and international committees that serve general scientific interests. My work has been recognized by numerous national and international organizations. I was elected to membership in the U.S. National Academy of Sciences in 1994, and to the National Academy of Sciences in India in the following year. I was a member of the Executive Committee of the Board of Governors of the University of Chicago (for the Argonne National Laboratory) and served as chairperson for their Science and Technology Advisory Committee. I have also served as chairman of the National Biotechnology Policy Board of the U.S. National Institutes of Health and as chairman of the National Research Council's Committee on Biobased Industrial Products, and on the National Research Council's Committee on Space Biology and Medicine. I have served for eight years on the Editorial Board of SCIENCE. In 2003, I was awarded the Selby Fellowship by the Australian Academy of Sciences.

I was appointed to [REDACTED] at Arizona State University (ASU) in Tempe in 2000 and as Regents' Professor in 2004. I served as the founding director of the Biodesign Institute at ASU from January 2001 through May 2003, and then was appointed to [REDACTED]

[REDACTED] Prior to my service at ASU, I had held faculty positions at the University of Illinois, Michigan State University and Texas A&M University, and visiting professorships in the Laboratoire de Photosynthese du CNRS in France, the Department of Applied Mathematics in Canberra, Australia and the Academia Sinica in Beijing, China. In addition to my work in academia, I served as [REDACTED] – a not-for-profit corporation affiliated with Cornell University, and as a research director at Dupont in Wilmington, Delaware.

Finally, [REDACTED] states:

I have served as [REDACTED] for the past four years. . . . I worked in the pharmaceutical industry (1986 - 1995), followed by a Full Professorship at the University of Jena (1995 - 2002) and the present appointment at the University of Leubeck (2003 - ...). My expertise in the field of structural virology is internationally recognized

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 in virology, or being among that small percentage at the very top of the field of endeavor.

C. Continuing work in the area of expertise in the United States

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. On the Form I-140, the petitioner failed to provide any information in Part 6, "Basic information about the proposed employment." In this case, the petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement detailing plans on how she intends to continue working as a virology researcher in the United States. Accordingly, the petitioner has not submitted "clear evidence" that she will continue to work in her area of expertise in the United States. 8 C.F.R. § 204.5(h)(5).

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. Further, the petitioner has not submitted clear evidence demonstrating that she will continue to work in her area of expertise in the United States. 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.