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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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

MAR 11 2011

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:

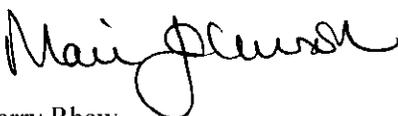
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INSTRUCTIONS:

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, Nebraska 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 ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

Specifically, we acknowledge that when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under three of the categories of evidence as required. These criteria are judging the work of others, original contributions of major significance, and authorship of scholarly articles pursuant to 8 C.F.R. §§ 204.5(h)(3)(iv), (v), and (vi). As explained in our final merits determination, however, much of the evidence that technically qualifies under some of those criteria reflects routine duties or accomplishments in the field that do not compare with the accomplishments of the most experienced and renowned members of the field.¹ Thus, such evidence is not consistent with a finding that the petitioner enjoys sustained national or international acclaim. As will be discussed further in our final merits determination, while counsel notes the caliber of the references who support the petition, their accomplishments, appointments as a director or professor, editorial positions, and publication records only reinforce our conclusion that the top of the petitioner's field is far higher than the level he has achieved.

I. Law

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

¹ The legal authority for this two-step analysis will be discussed at length below.

(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.² 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

² 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).

"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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 27, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner received his Ph.D. in Biochemistry from the All India Institute of Medical Sciences, New Delhi in 2004. At the time of filing, the petitioner was working as a postdoctoral research associate at Duke University Medical Center (DUMC) under the supervision of Dr. [REDACTED] Department of Medicine, DUMC. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

The petitioner submitted a February 28, 2008 letter from the Co-Chair of the Society for Investigative Dermatology (SID) Travel Fellowship Committee to the petitioner stating:

Thank you for your recent application to the Society for Investigative Dermatology (SID) as it relates to Travel Fellowships and the upcoming International Investigative Dermatology (IID) 2008 Meeting to be held in Kyoto, Japan.

The SID received over 300 applications for the three different travel fellowships categories that were available and was able to award 100 travel grants.

I am pleased to inform you that your application was selected as a recipient of [REDACTED] Travel Fellowship, in the amount of \$1,500.

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

The petitioner also submitted information from the SID's website stating:

A generous gift by [REDACTED] provide Annual Meeting travel fellowships to young investigators. . . . The following individuals are eligible to apply:

- Residents in dermatology and other medical fields
- Pre- and post-doctoral fellows
- Medical and graduate students
- Junior faculty who demonstrate extreme financial need

Fifteen to twenty awards are made each year. Applicants must submit an abstract for consideration as an oral presentation and be the presenting author.

The letter from [REDACTED] indicates that 100 travel grants were awarded for the IID 2008 Meeting alone. Moreover, fifteen to twenty [REDACTED] travel awards are given each year. Further, eligibility for the [REDACTED] travel fellowship is limited to residents in dermatology and other medical fields, pre- and post-doctoral fellows, medical and graduate students, and junior faculty who demonstrate extreme financial need. The petitioner did not submit evidence of the national or international *recognition* of his travel fellowship, such as national or widespread local coverage of the award in professional or general media. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion.

The petitioner submitted a December 19, 2008 e-mail from the American Society for Biochemistry and Molecular Biology (ASBMB) informing him that he was "selected to receive a Graduate/Postdoctoral travel fellowship to attend the ASBMB 2009 Annual Meeting . . . in New Orleans, LA, April 18-22, 2009." We note that eligibility for this travel fellowship is limited to graduate students and postdoctoral researchers. In response to the director's request for evidence, the petitioner submitted a certificate from the ASBMB "in recognition of [the petitioner's] participation in the ASBMB Graduate/Postdoctoral Travel Award Program in New Orleans, LA April 17-18, 2009." The record does not include information specifying the evaluation criteria for the travel award or the number of recipients. Further, there is no documentary evidence demonstrating that the travel fellowship is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a November 20, 2008 e-mail from his former supervisor [REDACTED] Duke Center for RNA Biology (CRB), DUMC, stating:

The CRB would be happy to provide you with \$500 to cover travel and/or registration expenses for the ASMB [American Society for Matrix Biology] meeting in December.

Please coordinate with [REDACTED] regarding how it would be best to do this – I believe we usually reimburse you after the meeting, but I will let Annette work this out with you.

The CRB's reimbursement of petitioner's travel and registration expenses for the biennial meeting of the ASMB in San Diego, California equates to travel cost compensation from his research institution rather than a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted information posted on the Duke Comprehensive Cancer Center (DCCC) website listing "2008 Award Winners" from the DCCC Annual Meeting. The list of award recipients includes two \$10,000 award winners, two \$5,000 award winners, six \$1,000 Young Investigator Awards for Poster Presentations, nineteen \$250 prize winners for outstanding poster presentations, and twenty five \$100 prize winners for outstanding poster presentations. The petitioner and his "Sponsor," Dr. [REDACTED] were listed among the [REDACTED]. This small cash prize equates to an institutional honor from Duke University rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted an October [REDACTED] letter from Duke University congratulating him "on being *nominated* for the [REDACTED] Outstanding Postdoc at Duke University award." [Emphasis added.] There is no evidence showing that the petitioner ultimately received the [REDACTED] Outstanding Postdoc at Duke University award. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of "the alien's receipt" of nationally or internationally recognized "prizes or awards" for excellence in the field of endeavor rather than simply a nomination. Earning a nomination does not equate to receipt of a prize or an award. Nevertheless, the Duke University Outstanding Postdoc award is an institutional honor limited to postdoctoral researchers at Duke University rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted a May 25, 1998 letter from the Controller of Examinations, Council of Scientific & Industrial Research (CSIR), Human Resource Development Group, Examination Unit, New Delhi stating that the petitioner "qualified in the above Examination for consideration for Award of Junior Research Fellowship in LIFE SCIENCES under the CSIR Fellowship Schemes." We cannot conclude that successfully passing a standardized examination and qualifying for a Junior Research Fellowship constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor. Further, we note that eligibility for the preceding fellowship was limited to students pursuing graduate studies. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

The petitioner also submitted a November 27, 2002 memorandum from the CSIR Extra Mural Research Division, New Delhi stating:

On the basis of *satisfactory* research progress of [the petitioner] as assessed and recommended by the Three Member Assessment Committee, the Head, Human Resource Development Group, CSIR has been pleased to accord his approval to the extension of fellowship as [redacted] from 01.11.2002 to 31.10.2003

[Emphasis added.]

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner's receipt of prizes or awards for "excellence" in the field of endeavor. Demonstrating "satisfactory research progress" does not constitute excellence in the field. With regard to the petitioner's [redacted] these fellowships represent financial support for his research training under the supervision of an experienced faculty member or scientist rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor.⁴ With regard to these fellowships for which the petitioner applied and received funding, we note that a substantial amount of scientific research is funded by grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the applicant are a factor in the fellowship application process. The funding institution has to be assured that the fellowship recipient is capable of performing the proposed research. Nevertheless, a fellowship grant is principally designed to fund temporary scientific training and future research, and not to recognize his past excellence in the research field. Accordingly, we cannot conclude that having one's scientific training and research funded in this manner equates to the petitioner's receipt of nationally or internationally recognized prizes or awards for excellence in the field.

In response to the director's request for evidence, the petitioner submitted a July 18, 2009 e-mail sent to him from Dr. [redacted] stating: "It is my pleasure to inform you that the selection committee for [redacted] Boston 2009 . . . has evaluated your application, and have [sic] decided to extend you an invite to attend the meeting on the 12th and 13th of September as an observer." The preceding invitation to attend [redacted] Boston 2009 post-dates the petition's March 27, 2009 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

Nevertheless, the preceding evidence constitutes an invitation to attend a meeting rather than a nationally or internationally recognized prize or award for excellence in the field.

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

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

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

The petitioner submitted a November 24, 2008 letter informing him of his acceptance to Regular membership in the ASBMB. The petitioner also submitted information from the ASBMB's website regarding its requirements for Regular membership stating:

Regular Membership (\$140)

Available to any individual who holds a doctoral degree and who has published, since receipt of the doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology. New regular members must be sponsored by one regular member of the society. Upon review and approval of the application by the executive officer, the applicant will be accepted as a member and be so notified.

We cannot conclude that holding a doctoral degree and publishing a single paper in a refereed journal equate to outstanding achievements.⁵ In this instance, the submitted documentation does

⁵ For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://www.bls.gov/oco/pdf/ocos047.pdf>, accessed on February 25, 2011, copy incorporated into the record of proceedings. The handbook also 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>, accessed on February 25, 2011, copy incorporated into the record of proceedings. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that publishing original research, whether arising from research at a university or private employer, is an expectation in the petitioner's field rather than evidence of "outstanding achievements."

not establish that the ASBMB requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted an internet printout from the ASMB stating that he is "registered as a postdoc2year member for the 2008, 2009 membership year," but there is no evidence (such as bylaws or rules of admission) showing that the ASMB requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

In response to the director's request for evidence, the petitioner submitted a July 18, 2009 e-mail sent to him from [REDACTED] stating: "It is my pleasure to inform you that the selection committee for [REDACTED] Boston 2009 . . . has evaluated your application, and have [sic] decided to extend you an invite to attend the meeting on the 12th and 13th of September as an *observer*." [Emphasis added.] The preceding invitation to attend [REDACTED] post-dates the petition's March 27, 2009 filing date. As previously discussed, a petitioner 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 this evidence in this proceeding. Nevertheless, the preceding e-mail constitutes an invitation to attend [REDACTED] "observer" rather than membership in an association in the petitioner's field. Further, there is no documentary evidence showing that the organization requires outstanding achievements in the biological sciences, as judged by recognized national or international experts in the petitioner's field.

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

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

In general, in order for published material to meet this criterion, it must be 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.⁶

The petitioner submitted material from the "Faculty & Resident in the News" section of the Duke University School of Medicine, Division of Dermatology website. The three-sentence piece states:

⁶ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

[The petitioner], Ph.D., a Research Associate in Duke Dermatology, has recently been awarded a Postdoctoral Travel Fellowship by the American Society for Biochemistry and Molecular Biology (ASBMB). [The petitioner] was awarded this prestigious Travel Fellowship to present his latest data in [REDACTED]

[Emphasis added.]

The petitioner submitted additional material posted on the Duke University School of Medicine, Division of Dermatology website briefly mentioning his receipt of a [REDACTED] to attend the IID 2008 Meeting. The author of the two brief pieces posted on the preceding website was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the petitioner has not submitted internet readership statistics or other comparable evidence showing that the Duke University School of Medicine, Division of Dermatology website qualifies as a form of major media.

The petitioner submitted a three-page [REDACTED] “News Release” entitled [REDACTED] prepared by the University of California, San Francisco (UCSF) News Office and posted on its website. The three-page article briefly lists the petitioner in the conclusion along with more than twenty other investigators. A news 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 news 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. The petitioner also submitted an August 3, 2007 article entitled [REDACTED]

[REDACTED] The August 3, 2007 MedicalNewsToday.com article, which is almost identical in content to the preceding UCSF News Release, states that it was “adapted by Medical News Today from original press release” by the UCSF. The three-page article briefly lists the petitioner in the conclusion along with more than twenty other investigators. The petitioner’s initial evidence included a [REDACTED] two-page article entitled [REDACTED] also posted at MedicalNewsToday.com. The two-page article briefly lists the petitioner at the conclusion along with eighteen other coauthors. With regard to the preceding articles, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” Articles that only briefly mention the petitioner in passing do not meet the plain language of this regulatory criterion.⁷ Further, there are no internet readership statistics or other comparable evidence showing that the preceding websites qualify as major media.

⁷ 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).

In September 2007, *Nature Genetics* published an article coauthored by DUMC professors [REDACTED] the petitioner, and sixteen others. In response to the director's request for evidence, the petitioner submitted an article reviewing the preceding article and another article appearing in the same September 2007 issue. The review article in *Nature Genetics* does not mention the petitioner by name and is more akin to a promotion of the article by the publisher than independent journalistic coverage of the petitioner and his work. Appearing in the same issue as the petitioner's article, the review does not expose the petitioner to any readers who are not already in possession of his article. Moreover, the review article similarly references numerous other authors.

The petitioner's response included additional review articles in *The Lancet*, *Immunotherapy*, *Immunogenetics*, *Brain*, *Rheumatology*, *Journal of Cellular and Molecular Medicine*, and *Human Molecular Genetics*. The petitioner also submitted a book chapter citing to his work along with numerous other sources. On appeal, the petitioner submits further review articles in *Archives of Neurology*, *Seminars in Immunology*, *Drugs*, and *Journal of Autoimmunity* citing to his work and that of numerous others. None of these articles are "about" the petitioner or even mention him by name aside from in their "references" section. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" relating to his work rather than simply about the petitioner's work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. It cannot be credibly asserted that the preceding review articles and book chapter which briefly reference the petitioner's article in *Nature Genetics* are "about" the petitioner.

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

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted documentation indicating that he completed review of a manuscript entitled [REDACTED]

mail from the Editorial Office of *Molecular Biology Reports* thanking him for reviewing manuscript

The petitioner submitted a February 24, 2009 e-mail requesting that he review manuscript . In response to the director's request for evidence, the petitioner submitted a March 12, 2009 e-mail from the Editorial Office of thanking him completed the review of manuscript

The petitioner submitted an October 15, 2008 letter from Regional Editor of *Advances in Medical and Dental Sciences*, stating: "[The petitioner] has been helping me by reviewing the submitted articles for publication in the above said Journal." The limited information provided in the letter from does not identify the title of the articles reviewed by the petitioner, their dates of completion, or the names of the authors. Merely submitting a letter claiming that the petitioner helped review articles without specifying the work he judged is insufficient to establish eligibility for this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, there is no documentary evidence of the petitioner's participation in a formal judging capacity for *Advances in Medical and Dental Sciences*, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv).

The petitioner submitted two scientific papers bearing a handwritten note at the top from his supervisor requesting "please could you review this manuscript." There is no documentary evidence demonstrating that the petitioner actually completed the preceding two manuscript reviews. The plain language of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Being asked to review a manuscript or proposal is not tantamount to evidence of one's actual "participation" as a reviewer. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of a supervisor requesting input from her subordinate.

In response to the director's request for evidence, the petitioner submitted a July 21, 2009 e-mail thanking him for reviewing manuscript for *Gene*. The petitioner was first invited to review the preceding manuscript on May 15, 2009. The petitioner also submitted a May 19, 2009 e-mail thanking him for reviewing manuscript for *Molecular Biology Reports*. The petitioner was requested to review the preceding manuscript on May 14, 2009. The petitioner received and completed the preceding manuscript review requests subsequent to the petition's March 27, 2009 filing date. As previously discussed, a petitioner 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 this evidence in this proceeding.

Thus, the record contains documentary evidence establishing that the petitioner participated in the review of one manuscript for *Gene* and two manuscripts for *Molecular Biology Reports* as of the petition's filing date. This documentation meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

The petitioner submitted letters of support from independent references discussing the significance of original research findings he coauthored with his superiors at DUMC (such as professors [REDACTED]). The references' statements do not merely reiterate the regulatory language of this criterion, they clearly describe how the petitioner and his superiors' scientific contributions are both original and of major significance in the field. Moreover, in support of the independent experts' statements, the petitioner submitted evidence of more than one hundred independent cites to his published findings and review articles that note the importance of the research. Thus, the petitioner has submitted qualifying evidence pursuant to 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 has documented his co-authorship of seven journal articles that were published as of the petition's filing date and, thus, he has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

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

The petitioner submitted documentation showing that he presented his work at various scientific meetings 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. 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 are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that the petitioner has already met.

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

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

The petitioner submitted letters of support discussing his work at DUMC as a postdoctoral research associate under the direction of professors [REDACTED]. In response to the director's request for evidence, the petitioner submitted a September 8, 2009 letter from Case Western Reserve University School of Medicine (CWRUSM) offering him a temporary position as a Senior Research Associate. The petitioner's position with CWRUSM post-dates the filing of the petition. As previously discussed, a petitioner 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 the petitioner's role for CWRUSM in this proceeding. While the petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his subordinate role was leading or critical for DUMC. For example, there is no organizational chart or other evidence documenting how the petitioner's position fell within the general hierarchy of DUMC. We note that the petitioner's temporary postdoctoral appointment at the DUMC was designed to provide specialized research experience and training in his field of endeavor.⁸ The petitioner's evidence does not demonstrate how his temporary appointment differentiated him from the other research scientists employed by the DUMC, let alone Duke's tenured faculty and principal investigators. For instance, unlike professors [REDACTED] there is no evidence that the petitioner has often served as a principal investigator and initiated research projects of his own. The documentation submitted by the petitioner does not establish that he was responsible for DUMC's success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that he meets this criterion.

Summary

In light of the above, the petitioner has submitted evidence that meets the plain language of the specific regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) – (vi) and therefore qualifies under three of the categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 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

⁸ "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on February 25, 2011, copy incorporated into the record of proceeding.

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)(i) – (iv), (vii), and (viii).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i), we note that applicants for the travel fellowships and Junior and Senior Research Fellowships received by the petitioner were limited to graduate students, residents, pre- or post-doctoral fellows, medical students, or junior faculty who demonstrate extreme financial need. Experienced experts and tenured faculty do not compete for such fellowships. Thus, they cannot establish that the petitioner is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁹ Likewise, it does not follow that receipt of an award which excludes veteran scientists in the field from consideration should necessarily qualify a researcher for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

In response to the director’s request for evidence, the petitioner submitted the results from a Japanese survey entitled “Investigative Survey on the Research Activities and Awareness of Postdoctoral Fellows.” Counsel points to statistics on page ii of the survey report indicating more than 75% of Japanese postdoctoral researchers surveyed had “less than six years of experience.” Counsel states: “It is likely most of these are postdoctoral fellows. If a prize is available to 75% of the people doing research, that prize is not insignificant” In fact, all of the respondents participating in the preceding survey were postdoctoral fellows. The results from this Japanese survey excluded tenured faculty or other scientists holding permanent research positions. Accordingly, the submitted survey results do not establish that postdoctoral researchers comprise 75% of researchers in the petitioner’s field. Nevertheless, the awards submitted by the petitioner do not meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(i) and are not indicative of sustained national or international acclaim at the very top of his field.

⁹ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

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. The petitioner's evidence included two scientific papers bearing a handwritten note at the top from his supervisor [REDACTED] requesting that the petitioner review the manuscripts. Aside from the petitioner's failure to submit documentary evidence showing that he actually completed the two manuscript reviews assigned by [REDACTED] we cannot conclude that being requested to review a manuscript by one's own supervisor is evidence of national or international acclaim. Moreover, regarding the remaining documentation submitted for 8 C.F.R. § 204.5(h)(iv), we cannot conclude that the petitioner's level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. As previously discussed, the petitioner submitted documentary evidence establishing that he participated in the review of one manuscript for *Gene* and two manuscripts for *Molecular Biology Reports* as of the petition's March 27, 2009 filing date. We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal as of the petition's filing date, we cannot conclude that his level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. For instance, [REDACTED] letter states that he served on the editorial board of *Molecular and Cellular Biology*.

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 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 his field at the national or international level.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(vi), we acknowledge that the petitioner has documented his co-authorship of seven journal articles that were published as of the petition's filing date. The petitioner, however, has not established that his publication record sets him 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)...” Further, as noted previously, the Department of Labor’s Occupational Outlook Handbook, 2010-11 Edition (accessed at www.bls.gov/oco on February 25, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a biological scientist and the requirements for such a position. The handbook expressly states that a “solid record of published research is essential in obtaining a permanent position involving basic research.” This information reveals that published research does not necessarily set an individual apart from other biological scientists employed in that researcher’s field.

That said, we acknowledge the positive response in the field to the petitioner’s research articles that he coauthored with his superiors at DUMC (such as professors [REDACTED]). We are not persuaded, however, that the petitioner’s contributions, presented in his well-received publications, rise to the level of sustained national or international acclaim in the context of his field. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. At the time of filing, the petitioner was working at DUMC as a postdoctoral research associate. The petitioner relies primarily on his completion of three manuscript reviews in the widespread peer review process, his publications with his superiors at DUMC, his publication citation record, the praise of members of his field, and the affirmation of his colleagues that his work was important to DUMC where he worked 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:

I have published extensively with a total of over 100 publications in peer-reviewed journals as well as authorship on patents. . . . Accompanying my role as Professor in [REDACTED] I am a member of the Cancer Comprehensive Center, the Faculty of the Center for RNA Biology, the Faculty of the Scleroderma Research Center and I am Senior Fellow of the Center for the Study of Aging and Human Development. I collaborate with researchers on a world-wide basis and have been on the Editorial Board for the *Journal of Investigative Dermatology* and act as reviewer for journals including *J Clin Invest*, *J Biol Chem*, *Biochim Biophys Acta*, *Biochem Biophys Res Comm*, *J Bone and Mineral Research*, *Bone*, *Matrix Biology*, *Connective Tissue Research* and *J Cellular Physiology* on a regular basis. Moreover, I act as a regular grant reviewer both in the U.S., as well as in the United Kingdom and the Netherlands.

[REDACTED] states:

In 1990 I was recruited to Duke University Medical Center where I am currently [REDACTED]

During my career I have published more than 105 peer-reviewed manuscripts, several book chapters and edited two volumes. From 1999 to 2008 I served in the editorial board of *Molecular and Cellular Biology* and I currently serve in the editorial board of [REDACTED] the leading journal in [REDACTED]. In 2005 I was the Editor of a volume of *Methods* dedicated to the study of alternative splicing.

I have been Member and Chair of the Biochemistry Study Section at the NIH and since [REDACTED] I have served as a permanent member of Council for NIGMS. Additionally I served as a Member of the Board of Directors of the [REDACTED] and until this year will serve as Chair of the Scientific Advisory Board of the [REDACTED], which studies the disruption of alternative splicing in cancer. I am also a member of the Scientific Advisory Board of [REDACTED] the most important group of [REDACTED]. It should be noted that this board of seven scientists includes three members of the National Academy of Sciences In the area of alternative splicing I have been asked to speak at many meetings and institutions (e.g., Keynote Speaker in the [REDACTED] and I have organized some of the most important meetings in this area. I was the founding chair of the [REDACTED] on the biology of post-transcriptional gene regulation [REDACTED] and chaired sessions in the same meeting in [REDACTED].

[REDACTED] states:

I am currently an Assistant Professor at the Center for Human Genetics in the Department of Medicine, Duke University, Durham, North Carolina. . . . I am an active member of the Human Genome Organization (Editor), the American Society of Human Genetics, the American Association for Cancer Research, the Society of Neuro-Oncology and the American Heart Association. I have published 62 peer reviewed articles and have reviewed manuscripts for 11 scientific journals including *Nature*, *Cancer Research* and *The European Journal of Human Genetics*.

[REDACTED] states:

Currently, I am a professor in Department of Pathology at the Baylor College of Medicine (BCM). . . . I am also a faculty member in three graduate programs: [REDACTED]

[REDACTED] I have authored more than sixty papers published in top ranking international journals, including several review articles on various aspects of RNA splicing and myotonic dystrophy. I am currently leading my research group in studying the roles of disrupted splicing regulation in myotonic dystrophy, the most common form of adult onset muscular dystrophy. My research has been well funded by grants from various external agencies such as the [REDACTED]

Finally, [REDACTED] states:

At present I am an Associate Professor and [REDACTED] at the University of Massachusetts Medical School in the Department of Cell Biology. . . . I have been an author on more than 260 peer reviewed and highly cited academic papers in prestigious journals. I have regularly reviewed scholarly papers for more than 60 journals and have served on ~50 different NIH review panels. I also serve on the Editorial Boards of several journals I have mentored many students, post-doctoral associates and visiting professors.

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a scientific researcher, or being among that small percentage at the very top of the field of endeavor.

III. Conclusion

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

ORDER: The appeal is dismissed.