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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]

DATE: MAY 05 2011 Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

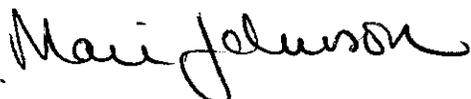
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
 Perry Rhew  
Chief, Administrative Appeals Office

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

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

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

On appeal, counsel submits a one-page statement. For the reasons discussed below, the AAO will uphold the director’s determination that the petitioner has not established her eligibility for the benefit sought. Ultimately, the evidence falls far short of the hyperbolic claims made by counsel and in the letters of support. For example, several references attest to the petitioner’s alleged presentations at elite conferences before international audiences but the record does not contain programs from these conferences, published proceedings, or even copies the presentations themselves. The petitioner does not list such presentations on her curriculum vitae. Thus, the credibility of these references is seriously diminished.

## **I. Law**

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

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

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

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

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

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

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

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

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

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

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

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

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

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

*Id.* at 1119-20.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

At the outset, it bears mention that the petitioner must establish her eligibility as of the date of filing, August 10, 2009. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Counsel initially asserted that the petitioner is "one of the leading nephrologists in the nation." The petitioner, however, worked as a resident in internal medicine prior to 2007 when she began her nephrology training fellowship at the University of Pittsburgh. While counsel stresses that the petitioner is board certified in internal medicine, the record lacks evidence that the petitioner is board certified in nephrology. One of the petitioner's references, [REDACTED], an assistant professor at the [REDACTED] lists board certification from the American Board of Nephrology on her curriculum vitae. Thus, such certification exists. Notably, [REDACTED] lists her nephrology fellowship under "postdoctoral training" on her curriculum.

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

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

The petitioner's initial submission included an exhibit entitled "Honors, Awards and Distinctions." Within that exhibit, the petitioner submitted the following:

1. A January 20, 2009 Department of Veterans Affairs Pittsburgh Healthcare System "Star" certificate for "Special Thanks and Recognition." Attached to the certificate is a form a patient completed recommending the petitioner for a "Star." On this form, the patient expresses appreciation to the petitioner for her "smile," passing on "good news about my labs" and "being part of this very special event (transplantation)."
2. A 2004-2005 "Resident Achievement Award" from [REDACTED]
3. A March 2, 2006 Certificate from the Southern Society for Clinical Investigation (SSCI) recognizing the petitioner "for Selection and Participation in the Fifth Annual SSCI Nephrology Young Investigators' Forum."

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

4. A plaque also dated March 2, 2006 awarding the petitioner second place in the [REDACTED] [REDACTED] for basic science research.
5. A June 10, 2009 email from the Great Rivers Affiliate of the American Heart Association (AHA) approving the petitioner's application for funding under the Physician-Scientist Postdoctoral Fellowship program.
6. An unsigned April 3, 2009 letter purportedly from [REDACTED] [REDACTED] advising that NKF had approved the petitioner's research proposal for funding under the NKF Postdoctoral Research Fellowships program.
7. An email from [REDACTED] Director of the Nephrology Fellowship Program at the [REDACTED] congratulating the petitioner and another doctor for their selection as "the Chief Kidney Doctors for the Fellowship program for academic 2008-09."

In response to the director's request for additional evidence about the significance of the above evidence, counsel asserts that the petitioner's travel grants constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i). The record, however, contains no travel grants or documentation about these grants, such as whether they are limited to newly graduated physicians to provide financial assistance for attending conferences.

The director concluded that the above evidence does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Counsel does not specifically challenge that conclusion on appeal.

Employee recognition based on a letter of appreciation from a patient is not a nationally or internationally recognized prize or award for excellence. Similarly, employee recognition limited to residents at that institution is not a nationally or internationally recognized prize or award for excellence.

While SSCI may be a prestigious association, the petitioner has not provided evidence that its young investigator awards are nationally or internationally recognized prizes or award for excellence. For example, the petitioner did not submit evidence that the general or trade media report on the selection of the awardees or similar evidence of the field's recognition of these awards.

As noted by the director, research grants are designed to fund future research rather than recognize past excellence. Thus, research grants are not qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

Finally, a job appointment, including a promotion, is not a prize or award.

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

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) mandates that the memberships be in associations that require outstanding achievements of their members. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). Nothing in these decisions, however, suggests that USCIS may ignore requirements that are expressly in the regulations. Thus, demonstrating that the petitioner is a member of an association is only half of the petitioner's burden. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner must also demonstrate that the association requires outstanding achievements of its members.

Within the exhibit entitled "Membership in Prestigious Societies," the petitioner submitted her Pennsylvania medical license and her board certification from the American Board of Internal Medicine. The petitioner also submitted her 2002 membership in the honor medical society Alpha Omega Alpha. Finally, the petitioner submitted evidence of her membership in the following professional associations: Women in Nephrology (WIN), the International Society of Nephrology (ISN) and the American Society of Nephrology (ASN). The petitioner also submitted materials about these associations and the Renal Physicians Association (RPA) and NKF without evidence that the petitioner is a member of either RPA or NKF.

The submitted materials about the American Board of Internal Medicine states that it certifies internists that "have demonstrated – to their peers and to the public – that they have the clinical judgment, skills and attitudes essential for the delivery of excellence patient care." Significantly, the board "certifies one out of every three practicing physicians in the United States," having issued "over 185,000 valid certificates in internal medicine and its subspecialties." The petitioner provided materials about the mission and activities of WIN but not the association's membership requirements. The evidence of membership in ISN suggests that the petitioner renew her membership as a "Member in Training." The remaining materials about ISN do not address its membership requirements. Similarly, the materials about ASN discuss its mission but not its membership requirements.

Even if the petitioner had documented her membership in RPA, the materials submitted reveal that RPA is open to "Nephrologists who are licensed to practice medicine in the U.S., engaged in the treatment of patients with kidney disease, involved in research activities involving kidney disease or involved in educational activities related to kidney disease." The materials further state: "Renal fellows in training are eligible for associate membership which is free during their training." Even if the

petitioner had documented her membership in NKF, the materials submitted do not address the membership requirements for that association.

In response to the director's request for additional evidence, the petitioner submitted materials about SSCI and Alpha Omega Alpha. While the petitioner has presented her work at an SSCI young investigators' forum and received recognition for the presentation, the petitioner did not document her membership in SSCI.

The materials regarding Alpha Omega Alpha state that membership in the society "confers recognition for a physician's dedication to the profession and art of healing." The materials further state that the membership includes students, who could not yet have outstanding achievements in the field of medicine. Academic achievements such as a student's grade point average are not outstanding achievements in the discipline or field of nephrology or even medicine as a whole. Moreover, the materials do not provide the exact membership requirements, stating instead that those requirements appear in the society's constitution, which the petitioner did not submit.

In her response to the director's request for additional evidence, counsel states:

Please note that in general for the American physicians, it is very rare for outstanding achievement actually to be required. For this reason, we respectfully request that [USCIS] look to her published and presented work as well as her unique contributions to the field as a clinical physician and researcher.

On appeal, counsel asserts:

[The petitioner] is a member of most of the most prominent medical societies in the country. Generally, these societies do not require outstanding achievements on the part of their members, but this is the norm with regard to American medical societies we respectfully assert.

Counsel appears to concede that the petitioner is not, in fact, a member of an association that requires outstanding achievements of its members. Counsel's suggestion that such associations do not exist in the United States both lacks support in the record and is irrelevant. First, counsel's assertion does not address the existence of associations such as the Institute of Medicine of the National Academies. Even assuming such associations are rare, counsel has not explained the relevance of a limited number of qualifying medical associations. As stated above, the definition of extraordinary ability means a level of expertise indicating that the individual is "one of that *small percentage* who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Thus, the fact that the petitioner only belongs to those associations of which it is "the norm" to belong does not advance the petitioner's ultimate claim to eligibility.

Even if the AAO accepted that this standard was not readily applicable to the petitioner's field, and the AAO makes no such finding, the petitioner's professional memberships do not constitute comparable evidence under 8 C.F.R. § 204.5(h)(4). Specifically, membership in associations that do not require outstanding achievements of their members is not remotely "comparable" to membership in associations that do.

As stressed above, regardless of whether there are medical associations that require outstanding achievements of their members, the AAO is bound by the plain language requirements at 8 C.F.R. § 204.5(h)(3)(ii). As the petitioner has not demonstrated that any of the associations of which she is a member requires outstanding achievements for members at the petitioner's level of membership, she has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(ii).

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

Counsel did not previously assert that the petitioner was submitting qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii). The director concluded that the petitioner did not submit such evidence. On appeal, counsel states for the first time that the petitioner submitted "material about the alien." Counsel does not elaborate as to what evidence in the record constitutes "material about the alien."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work. The record contains published articles that cite the petitioner's work in a footnote. Some of these articles contain hundreds of footnotes. It cannot be credibly asserted that any of these published articles are "about" the petitioner relating to her work. Rather they are about the authors' own work or recent developments in the field in general.

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

*Evidence of the alien's 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 a letter thanking the petitioner for agreeing to teach a four-session Advanced Physical Examination Course at the University of Pittsburgh. The petitioner also submitted a blank student evaluation form for this course. In addition, the petitioner submitted a University of Pittsburgh memorandum advising the petitioner that it was time to review the fellow applications and complete the Rank Sheet.

In response to the director's request for additional evidence, counsel asserted that the petitioner had judged the work of others "as an educator and researcher." Counsel further asserted that the petitioner

has judged the work of “senior physicians who do not have her expertise.” Finally, counsel asserted that the petitioner has reviewed manuscripts for the *American Journal of Physiology – Renal Physiology*. The petitioner submitted a letter from [REDACTED], an assistant professor of medicine at the [REDACTED], explaining that she has “requested that [the petitioner] assist me in my role of manuscript referee for the American Journal of Physiology – Renal Physiology.” [REDACTED] specifically explicitly states that she, not the petitioner, is the person that the journal asked to referee the manuscripts. The record contains no requests directly from journals addressed to the petitioner.

The director concluded that any “judging” duties were incidental and inherent to teaching. On appeal, counsel states generally that the petitioner “has judged the work of even senior peers on several levels.”

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the beneficiary 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 AAO does not add any novel evidentiary requirements by concluding incidental review of student work inherent to all teachers and an informal request from a colleague for input on her own manuscript review fail to meet the plain language requirements at 8 C.F.R. § 204.5(h)(3)(iv).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Nevertheless, the AAO will still consider this evidence in the final merits determination.

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

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. The 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.

The record contains four articles, two of which are review articles. Review articles do not report the authors’ original contributions to the field. [REDACTED]

[REDACTED] at the [REDACTED] asserts that the petitioner was “hand-selected to have her work presented before leading international medical conferences attended by experts from throughout the world.” [REDACTED] does not identify these conferences and the record establishes only that the petitioner presented original research at the SSCI Nephrology Young Investigators’ Forum and made other presentations at local seminars. Thus, the only widely disseminated original research in the record consists of the petitioner’s two articles reporting original

research and her presentation at the SSCI forum, although that event appears to be a regional rather than a national or international conference.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.<sup>3</sup> Thus, there is no presumption that every published article or presentation is a contribution of major significance; rather, the petitioner must document the actual impact of her article and presentation.

The petitioner submitted evidence that her article on the modulation of COX-2 expression by statins in [REDACTED] had garnered five citations. She also submitted evidence that her review article in [REDACTED] had garnered 11 citations. As stated above, however, the review article does not report on the petitioner's own original research. A single original article that has garnered five citations is not indicative of original contributions in the field.

As discussed above, while the petitioner did not submit a copy of this presentation and does not list this presentation among her presentations on her curriculum vitae, the petitioner received a second place plaque "in recognition of your outstanding contributions to basic science research" from SSCI. The plaque is in recognition of a presentation at the society's Nephrology Young Investigators' Forum. Such recognition at the time of presentation may demonstrate the promising nature of the research, but cannot demonstrate the study's ultimate influence on the field once disseminated. The record contains no evidence that other researchers have cited this study or comparable evidence of the study's influence in the field.

The remaining evidence relevant to this criterion consists of letters. [REDACTED], a former medical student and resident at the American University of Beirut and a former nephrology resident at Emory University, provides an anecdote where the petitioner correctly diagnosed and successfully treated a dialysis patient having a heart attack "while other physicians were unable to treat this patient's condition." The anecdote does not explain what other physicians saw this patient or why they were unable to diagnose his heart attack. Ultimately, an anecdote where the petitioner successfully diagnosed and treated a patient cannot demonstrate her original contributions of major significance in the field.

[REDACTED], Director of the Renal Division at the [REDACTED] discusses the petitioner's work as an intern at that institution. [REDACTED] asserts that the petitioner has "rare expertise in handling sophisticated, state-of-the-art procedures" and that these skills allows the

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

petitioner to diagnose renal problems correctly at their earliest stages. [REDACTED] does not assert that the petitioner developed any of these "sophisticated state-of-the-art procedures" or explain how knowledge of procedures developed by others and apparently taught to the petitioner by someone is an "original" contribution in the field of nephrology.

[REDACTED] also praises the petitioner ability to combine clinical expertise and research. [REDACTED] notes that the petitioner published an original study in [REDACTED] [REDACTED] asserts that this study "has already shown much influence in her nephrology field." [REDACTED] provides no examples of this alleged influence. USCIS need not accept primarily conclusory assertions.<sup>4</sup> [REDACTED] asserts that the petitioner's "groundbreaking work has also been presented at numerous elite forums before international audiences of fellow experts." As stated above, however, the record contains evidence only that the petitioner presented her research at the regional SSCI Young Investigators' Forum and several local seminars at the institutions where she worked. [REDACTED] assertion, therefore, is not supported by the record and, thus, his overall credibility is diminished.

[REDACTED] discusses the petitioner's work at the University of Pittsburgh. Like [REDACTED], [REDACTED] makes unsupported assertions regarding the nature of the petitioner's past presentations, referencing "leading international medical conferences" whereas the petitioner appears only to have made a presentation at a regional conference within the United States and internal grand round and journal club meetings. Similarly, [REDACTED] asserts that the petitioner "has also played a leading role in numerous important and prominent nephrology research studies that have been so progressive as to have been awarded with publication in elite medical journals." Instead, the petitioner has authored only four articles, two of which are review articles rather than discussions of the petitioner's original research. [REDACTED] does not explain how two, or even four, research articles rise to the level of "numerous." [REDACTED] also asserts that the petitioner's research has further advanced the application of "her tools." [REDACTED] does not provide examples of "tools" developed by the petitioner. [REDACTED] assertions are so hyperbolic and disassociated from the actual evidence of record that they serve only to diminish his credibility in this proceeding.

[REDACTED] currently an associate professor at the [REDACTED], indicates that he was formerly the associate director of Nephrology Fellowship at the [REDACTED]. [REDACTED] asserts that the petitioner has played a critical role for both Emory University and the University of Pittsburgh. Additional discussion of this assertion appears below under 8 C.F.R. § 204.5(h)(3)(viii). [REDACTED] also affirms that there is a shortage of nephrologists, especially those with expertise in renal replacement procedures, peritoneal dialysis and renal transplantation. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

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<sup>4</sup> *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

██████████, Chief of the Renal Section at the ██████████ and a professor at the ██████████, asserts that the petitioner “has presented her work at leading international medical conferences, and has also been awarded prestigious research grants to perform her expert research.” As stated above, the petitioner has not, in fact, presented her work at medical conferences. ██████████ also asserts that RPA is one of the most “competitive medical organizations in the world.” As stated above, however, the materials regarding membership in RPA reveals that any licensed physician practicing in nephrology is eligible. Even counsel concedes on appeal that the petitioner’s memberships are not exclusive. Thus, once again, ██████████ credibility is diminished. ██████████ states that the petitioner “has also developed a reputation for her pioneering research projects which have merited world-wide publication, and has been relied upon as an expert in her field in numerous ways.” This highly conclusory statement without a single example of this reliance carries no evidentiary weight.

The petitioner also submitted letters from those with whom she has not worked. ██████████, Chief of the Division of Pediatric Nephrology at the ██████████ asserts that her letter is based on a “review of [the petitioner’s] credentials and her stellar reputation in the field.” According to her curriculum vitae, ██████████ has coauthored at least four articles with ██████████. ██████████ states:

Specifically, [the petitioner] has expertise in treating Chronic Renal Disease, End Stage Renal Disease, Hypertension, Electrolyte Disorder and Acute Renal Failure. [The petitioner] specializes in dialysis catheter placements (both electively and under emergent situations) and kidney biopsy for diagnostic and therapeutic purposes, both in native and transplanted kidneys. She manages hypertension, diabetes, electrolyte abnormalities, polycythemia and other complications of renal disease. Less than 5% of nephrologists in the United States are capable of performing such technically demanding care.

The petitioner submitted *Medicare’s End-Stage Renal Disease Program: Current Status and Future Prospects* as evidence of the importance of the petitioner’s field. This article lists both diabetes and hypertension as end stage renal characteristics. Thus, both hypertension and diabetes fall squarely within a nephrologist’s area of practice. The article does not suggest that 95 percent of nephrologists cannot manage hypertension or diabetes, a statistic that if remotely true would seem to warrant widespread media coverage. In fact, on page 170 of the article, the authors indicate that the quality of care for end stage renal disease (ESRD) patients is improving and that the “nephrology community has also developed several clinical practice guidelines to assist clinicians who care for ESRD patients.” Without statistical support, ██████████ assertion is not persuasive.

In response to the director’s request for additional evidence, ██████████, Chair in Nephrology at ██████████ asserts that he has reviewed the petitioner’s resume. ██████████ does not suggest that he had ever heard of the petitioner prior to being contacted for a reference letter. ██████████

has previously coauthored an article with [REDACTED]. [REDACTED] provides conclusory assertions without providing a specific contribution and explaining how it has impacted the field of nephrology.

[REDACTED] Director of the Kidney/Pancreas Transplant Service at the [REDACTED] in New Jersey, discusses the petitioner's 2009 article and asserts that "it has a very important impact on my own practice and that of my colleagues." This article, however, is a review article and does not report on the petitioner's original research. This letter does not demonstrate the petitioner's reputation outside of New Jersey. As noted above, the petitioner's former colleague, [REDACTED] current works at the [REDACTED]

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* 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).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.<sup>5</sup> 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, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>6</sup> The

<sup>5</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

<sup>6</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept

petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters. In fact, the record contradicts some of the assertions in these letters.

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

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

The petitioner submitted four published articles. This evidence meets the plain language requirements set forth at 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.*

In response to the director's request for additional evidence, counsel requested that the director consider the petitioner's conference presentations under 8 C.F.R. § 204.5(h)(3)(vii). As stated above, the record documents the petitioner's presentation at the SSCI Nephrology Young Investigators' Forum and local presentations at the institutions where she worked.

The regulation at 8 C.F.R. § 204.5(h)(3)(vii) expressly requires that the petitioner's work be displayed at "artistic" exhibitions or showcases. Even accepting that this criterion is not readily applicable to the petitioner's occupation, there is no need to consider them as comparable evidence under 8 C.F.R. § 204.5(h)(4), a provision that allows USCIS to consider evidence that otherwise does not fall under the relevant standards at 8 C.F.R. § 204.5(h)(3). Scholarly presentations that are published in the proceedings of conferences already meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). As stated above, the petitioner has submitted qualifying evidence under that criterion. Moreover, presentations are at least relevant to the contributions criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). Thus, this decision has already considered the petitioner's presentations and it would be inconsistent with the statutory requirement of extensive evidence to conclude that such presentations are also qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii). Moreover, the purpose of scientific conferences is to disseminate the latest novel research to other scholars in the field; they are not generally comparable to artistic exhibitions or showcases, designed for the general public appreciation.

In light of the above, the petitioner has not submitted qualifying evidence that either meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(vii) or that warrants consideration as comparable evidence under 8 C.F.R. § 204.5(h)(4).

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

Counsel has consistently asserted that the petitioner has played a leading or critical role for every hospital where she has worked as an educator, researcher and physician. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

asserts that the petitioner “played a leading role in numerous important and prominent research studies.” At issue, however, is whether the petitioner played a leading or critical role for an organization or establishment as a whole. Regardless, merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.<sup>7</sup> Moreover, USCIS need not accept primarily conclusory assertions.<sup>8</sup>

the former Associate Director of the Renal Fellowship Program at the asserts that the petitioner “played critical roles in some of the best centers of excellence in nephrology in North America and abroad, namely the University of Pittsburgh Medical Center and Emory University’s School of Medicine.” Neither of the named institutions is outside the United States as claimed by

The recognition certificate from Emory University reveals that the petitioner was an intern at that institution. confirms that the petitioner was a fellow in nephrology at that university. As discussed above, other references include their fellowships under training. The record contains an email congratulating the petitioner and another doctor for their selection as “the Chief Kidney Doctors for the Fellowship program for academic 2008-09.” The record contains no evidence explaining how this role fits within the overall hierarchy of the University of Pittsburgh School of Medicine. Moreover, the position appears to still be within the fellowship training program. The implication that every medical resident or fellow plays a leading role for the hospital where she works is not persuasive.

At issue, then, is whether the petitioner performed a critical role for either hospital. Hospitals require competent interns and fellows. A conclusion that the petitioner played a critical role for either hospital simply by competently working in a position that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that employers do not typically hire individuals to fill roles that serve no purpose for the employer; yet not every employee for a distinguished organization meets this criterion. In determining whether the petitioner’s role was critical the AAO looks at her performance in that role and how it contributed to the hospital’s activities beyond what is normally expected of interns and fellows in training.

<sup>7</sup> *Fedin Bros. Co.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d at 41; *Ayvr Associates, Inc.*, 1997 WL 188942 at \*5.

<sup>8</sup> *1756, Inc.*, 745 F. Supp. at 15.

As stated above, ██████ thanked the petitioner for agreeing to teach a four-session course at the University of Pittsburgh. The petitioner also submitted evidence that the petitioner was one of several lecturers for “Kidney Course 2008,” which appears to be an internal course at the University of Pittsburgh. The petitioner also participated in Grand Rounds and a journal club, both of which appear to be internal.

The record lacks evidence the petitioner contributed significantly to the activities of any university beyond the normal expectations of the numerous interns and fellows who rotate through these universities annually.

In light of the above, the petitioner, who has only worked in trainee positions, has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii).

#### *Summary*

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

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

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

This decision has already addressed why the petitioner’s “awards” do not rise to the level of nationally or internationally recognized awards for excellence. The evidence discussed above is also not indicative of or consistent with sustained acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of her endeavor.” Employer recognition and awards and research grants limited to young investigators or trainees does not compare the petitioner with the most experienced and renowned members of the field.

Similarly, the medical honor society recognizes high educational achievement or gifted teaching. The petitioner became a member in 2002, the same year she obtained her medical degree. Thus, the membership appears to recognize her educational achievements. The membership does not suggest that she compares with the most experienced and renowned members of the field. The petitioner did not establish that any of the remaining memberships require much more than qualifications for

employment in the field and pursuit of such employment. Such memberships are not indicative of the petitioner's ranking at the very top of her field.

As stated above, the record reflects that the petitioner has taught courses and refereed articles for a journal at the request of her own supervisor. The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's national or international acclaim. *See Kazarian*, 596 F.3d at 1122. This purported experience as a "judge" is entirely internal and is not consistent with national or international acclaim.

Moreover, scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the petitioner cannot establish that her experience is indicative of or consistent with national or international recognition.

This decision has already discussed at length why the petitioner has failed to establish that her ability to perform procedures developed by others and minimal research history constitute contributions of major significance to the field. The record is simply not persuasive that the petitioner's training experience, including participation in research, elevates her to that small percentage at the top of her field.

As stated above, the petitioner has authored scholarly articles. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the field's response to these articles may be and will be considered in our final merits determination. The petitioner documented that two of her articles have garnered a limited number of citations. This number of citations is not consistent with or indicative of national or international acclaim in nephrology.

While the petitioner may have served a critical role for specific projects and taught courses in her capacity as a fellow, her positions have been trainee positions. Simply contributing to the passing on of knowledge someone else passed on to her in the context of a teaching hospital is not indicative of or consistent with either national or international acclaim or a position within the small percentage at the very top of her field.

More generally, [REDACTED] further asserts that the petitioner "is one of the elite members in treating the most rare disorders that only a very small amount of physicians are qualified to treat." [REDACTED] does not explain this assertion in light of the fact that several of the references are board certified nephrologists and the petitioner has not even secured this certification of competence in nephrology. If it is [REDACTED] assertion that the petitioner is an elite physician simply by specializing in nephrology because the majority of physicians are not nephrologists, that assertion is not persuasive. There are many medical specialties, including "complex" specialties such as

cardiology, neurology, etc. The large number of specialties suggests that no one specialty accounts for the majority of specialists. Not every specialist is within that small percentage at the very top of the field or nationally or internationally acclaimed.

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, a nephrology fellow, relies on certification in internal medicine; recognition limited to employees or young investigators; professional memberships; service as a teacher at a teaching hospital; standard grand round presentations; an anecdote of her successful treatment of a patient; a minimal publication record; and the praise of peers, some of whom lack credibility. Significantly, the petitioner's references list their own fellowship under training on their curriculum vitae. [REDACTED] is Chief of the Renal-Electrolyte Division at the [REDACTED] and has served on the editorial board of three journals. [REDACTED] [REDACTED] are board certified in nephrology. [REDACTED] has also served on several editorial boards. [REDACTED] is also Chief Renal Section at the [REDACTED] [REDACTED] and served on the board of directors of the National Kidney Foundation. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

### III. Conclusion

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

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

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

**ORDER:** The appeal is dismissed.