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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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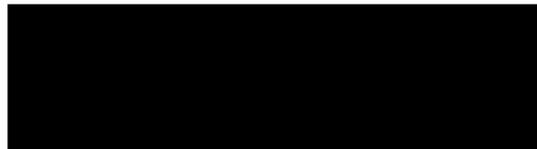
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IN RE:

Petitioner: 
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

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 brief and additional evidence. In part, counsel asserts that the director erred by not issuing a request for additional evidence. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) gives the director the discretion to deny a petition without first issuing a request for additional evidence. This decision, however, will consider the new evidence submitted on appeal. In addition, counsel relies on a July 30, 1992 correspondence memorandum from Lawrence Weinig, Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [REDACTED] discussing [REDACTED] personal inclinations. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer’s analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (Dec. 7, 2000).¹ Ultimately, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) does not support several of counsel’s assertions. Despite the AAO’s reservations regarding some of counsel’s assertions, however, the AAO is satisfied that the evidence of record in the aggregate, including that submitted on appeal, adequately establishes the petitioner’s eligibility for the classification.

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):

¹ Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any USCIS employee do not constitute official USCIS policy.

(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.*; 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.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

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).

acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 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 (9th Cir. 2003) (recognizing the AAO’s *de novo* authority).

II. Analysis

A. Evidentiary Criteria³

As stated above, several of counsel’s assertions are not persuasive. For example, the petitioner’s past training fellowships and research grants support future work and, thus, are not recognition for past accomplishments. Moreover, student travel grants are financial assistance for attending a conference and are not nationally or internationally recognized prizes or awards for excellence. Thus, this evidence is not qualifying evidence of nationally or internationally recognized prizes or awards for excellence pursuant to 8 C.F.R. § 204.5(h)(3)(i).

Similarly, the petitioner’s professional memberships and competency certification are not memberships in associations that require outstanding achievements of their members pursuant to 8 C.F.R. § 204.5(h)(3)(ii).

Furthermore, contrary to counsel’s assertion, [REDACTED] never suggests under which criterion citations should be considered. As they are not “about” the petitioner relating to his work, they are not published material about the petitioner pursuant to 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, counsel advances a new claim that the petitioner has served as a judge of the work of others as a database editor. While it is generally understood that an editor for a journal reviews the work of contributors to that journal, the record does not include the duties of an editor of a database. Without such evidence, the petitioner cannot establish that this position involves serving as a judge of the work of others pursuant to 8 C.F.R. § 204.5(h)(3)(iv).

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

Finally, it is neither arbitrary, capricious, nor an abuse of discretion to conclude that scientific presentations at scientific conferences do not qualify as display of the petitioner's work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). *Kazarian*, 596 F. 3d at 1122.

Despite the above concerns with some of counsel's assertions, the petitioner has submitted qualifying evidence that meets the plain language requirements of the following criteria.

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

The petitioner has an extensive publication record. The regulations, however, 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.⁴ Initially and again on appeal, the petitioner submitted evidence that researchers have cited his work. The petitioner must establish his eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, however, the citations on appeal merely demonstrate that the petitioner continues to sustain an already notable pattern of citation.

The reference letters also confirm a pattern of original research contributions of major significance. [REDACTED], an associate professor at the [REDACTED], discusses the petitioner's research while a Ph.D. student at that institution under the direction of [REDACTED]. The primary focus of the petitioner's doctoral research was on the cytogenetics and molecular genetics of retinoblastoma. Specifically, [REDACTED] explains:

In the first place, [the petitioner] studied the constitutional chromosomal abnormalities in patients with retinoblastoma and identified a few interesting abnormalities in some of them. The second phase of his thesis involved the identification of RB1 gene mutations in those patients, who did not show chromosomal abnormalities in RB21 locus. He

⁴ 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 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th 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.

scanned four exons that were most commonly shown in literature to have mutations in patients with retinoblastoma. His research findings were contemporary and of extreme relevance to the field which was the reason for it to receive much attention. He presented his findings in national and international conferences and published them in international journals too. He was the first one to establish molecular techniques used to scan gene mutations, such as Single Strand Confirmation Polymorphism.

then notes that the petitioner received a UICC fellowship which he completed at . According to , during this fellowship the petitioner learned the Denaturing High Performance Liquid Chromatography (DHPLC) technique. continues:

The fellowship also supported him to carry out a project on identifying the sequence variations in the RB1 gene. He screened all the exons as well as the entire promoter region of RB1 gene for causative mutations in the bilateral retinoblastoma patients using DHPLC and automated DNA sequencing. In addition, he also screened these regions in controls from worldwide populations to identify the sequence variations in RB1 gene. By finding these sequence variations in a wide range of population, he could classify a novel missense mutation that he found in one of the bilateral retinoblastoma patients as potential causative mutation. Also, the DNA sequence variations in the RB1 gene he observed in his study can be used as markers to identify the affected children in families with retinoblastoma at the early stage of disease, which is very important to save the vision as well as life.

notes that the petitioner presented this work at a forum as a guest lecturer. Finally, discusses the petitioner's participation in workshops conducted in 1999 and 2000. asserts that the petitioner was in charge of preparing the manuals for one workshop in 1999. asserts that the participants "appreciated" the manuals.

, an associate professor at the , confirms that the petitioner served as a postdoctoral fellow in her laboratory for three years. discusses the petitioner's work there, during which time he "developed a new area of research i.e., characterizing sequence variations in the WFS1 gene," the gene responsible for DFNA deafness. explains that the gene also contains "a large number of biologically insignificant benign DNA sequence variations," making it difficult to classify a new sequence change as a potential disease causing change or a benign polymorphism. continues that the petitioner identified variations in people with different ethnic backgrounds and 20 different primates, using a statistical tool to test whether the variations are disease causing or benign. She notes that the petitioner collaborated with a population geneticist and evolutionary biologist on a project for which he is listed as co-investigator.

continues that, based on the results from the above study, the petitioner "created a web-based database cataloging all probable disease causing mutations that are identified in patients with low frequency hearing loss, Wolfram syndrome, and Psychiatric disorders by this group as well as other

groups all over the world.” According to [REDACTED], “the database also catalogs DNA sequence variations/polymorphisms identified by him as well as by various other groups.” [REDACTED] asserts that other researchers appreciated the database, which serves as a “valuable resource for clinicians and researchers alike in the diagnosis and management of patients with these conditions.”

The record supports [REDACTED]’s assertions. Specifically, the record contains a printout from the database listing the petitioner as editor. The record also contains highly favorable citations to the database. For example, [REDACTED] states: “A number of mutation detection strategies can be used to screen *WFS1* for nucleotide changes, although DHPLC and direct sequencing are used clinically.” [REDACTED] then recommends the petitioner’s database as a source to track the latest information on *WFS1*. In an article in [REDACTED], the authors affirm that in their own study, they compared each mutation they found with those on the petitioner’s database. The petitioner also submitted two other citations to this database.

The Board of Immigration Appeals (the Board) 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 Board 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.⁵ 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). USCIS, however, 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 this decision 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)).

⁵ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th 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” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁶ The letters considered above, however, provide specific examples of contributions and how those contributions rise to a level consistent with major significance in the field. The petitioner also submitted sufficient corroborating evidence in existence prior to the preparation of the petition, which bolsters the weight of the reference letters.

In light of the above, the petitioner's work on WFS1, including a well-cited article and a well-received database, constitutes qualifying evidence that meets the plain language requirements of the regulation 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 two book chapters "in press." As these chapters had yet to appear in a published format as of the date of filing, they cannot constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi). See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner did, however, also submit published articles in conference proceedings and 20 published journal articles. Thus, the petitioner submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

The record adequately establishes that the petitioner has performed in a critical role for [REDACTED] in part as designer and editor of the institute's WFS1 database. The record also adequately demonstrates the distinguished reputation of the institute individually and separately from the [REDACTED].

Summary

In light of the above, the petitioner has 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. Next, the AAO will review the evidence in the aggregate as part of the final merits determination.

⁶ *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

B. Final Merits Determination

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

As stated above, the petitioner had authored 20 scholarly articles as of the date of filing. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, the field’s response to these articles may be considered in the final merits determination. The petitioner has demonstrated an impressive record of citation as of the date of filing that has increased substantially since that time. The petitioner has also designed a database that is cited as a useful tool, has been applied in research and is referenced favorably by a research team outside the United States. As it is self-evident from the citations that clinicians are likely to use this diagnostic tool without citing it in published research, this citation record recommending the site for clinical use is notable. While USCIS does not determine acclaim by association, it is worth noting that the petitioner has extensive experience working in highly competitive positions for highly distinguished entities. Given this evidence, and other evidence of record submitted both initially and on appeal, the petitioner has demonstrated that he is one of that small percentage who has risen to the very top of his field.

III. Conclusion

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the evidentiary criteria and established 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” and “sustained national or international acclaim.” His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203(b)(1)(A) of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained and the petition is approved.