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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**

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DATE:

SEP 12 2011

Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



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 the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii), (v) and (vi). For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 1119-20.

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 *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

II. Analysis

A. Evidentiary Criteria

This petition, filed on February 6, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner received her Ph.D. in Molecular and Cellular Biology and in Endocrinology from the Albert Einstein College of Medicine (AECOM) in 2006 under the direction of [REDACTED] Albert Einstein Cancer Center, and Professor in the Department of Developmental and Molecular Biology, AECOM. At the time of filing, the petitioner was working as a postdoctoral research fellow in the laboratory of [REDACTED], Department of Microbiology, Columbia University Medical Center. In response to the director's request for evidence, the petitioner submitted documentation indicating that she is presently working as a postdoctoral research fellow in the laboratory of [REDACTED] Senior Biomedical Research Service, National Institute of Child Health & Human Development, National Institutes of Health. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted copies of scientific journal articles indicating that her work has been cited by other researchers in their publications. For instance, the petitioner submitted an article entitled [REDACTED] which cites to the petitioner and [REDACTED] study published in *Proceedings of the National Academy of Sciences of the United States of America*. Articles which cite to the petitioner's work are primarily about the authors' own work or recent developments in the field in general, and are not about the petitioner or even her work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published

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

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

material be “about the alien.”⁴ The submitted citations do not discuss the petitioner’s standing in the field or any other information so as to be considered published material about the petitioner as required by this criterion. Moreover, the AAO notes that the articles citing to the petitioner’s work similarly referenced numerous other authors.

On appeal, counsel argues that the petitioner’s citation evidence includes review articles that comment on the petitioner’s work “in one or two paragraphs” and “specifically recognize the significance” of her novel findings. Counsel points to a review article entitled “Nitric oxide and hormones in breast cancer: allies or enemies?” in which the petitioner’s work with [REDACTED] cited in a single sentence along with an earlier study by [REDACTED] published in 1999 [REDACTED] latter work with the petitioner (published in 2005) is designated as “of special interest” in the bibliography. Counsel also points to an article entitled “Genetic Screen for Chromosome Instability in Mice” in which the petitioner’s work with [REDACTED] is referenced in a single paragraph (three sentences) of a six-page article with 69 other citations. Even if we were to conclude that the review articles which only briefly reference the petitioner’s work (along with numerous other researchers’ studies) are “about” her work, which we do not, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien” relating to her 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 submitted articles are “about” the petitioner relating to her work. The 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 the above, the petitioner has not established that she meets this criterion.

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

The petitioner submitted several letters of support discussing her work.

[REDACTED] states:

[The petitioner’s] previous studying and training in my lab not only identified novel and important mechanisms involved in hormonal regulation of embryo implantation in the reproductive system, also prepared her very well for her future research activity.

* * *

In my laboratory, [the petitioner] worked on the female sex steroid hormones regulation of cell proliferation and differentiation in the reproductive system, specifically in uterus.... Using an ovariectomized mouse model treated with two sex steroid hormones Estradiol 17-β (E₂) and Progesterone (P₄), [the petitioner] set up an excellent system to

⁴ 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).

mimic the physiological events during the estrous cycle and early pregnancy. Combined with a simple way to purify the uterine epithelial cells, [the petitioner] studied the action of these two steroid hormones on the luminal epithelial cells, which make the first physical attachment with blastocysts. These cells are quite rare in uterus, but [the petitioner's] work has helped to define several novel mechanisms involved in the hormone regulation of uterine epithelial cell proliferation and differentiation in vivo. As part of this study, she has shown that P₄ inhibits the E₂-induced P13 kinase pathway during the early G1 phase to block uterine epithelial cell proliferation. There is much evidence that points to P13 kinase /AKT pathway as a target for therapeutic prevention in breast and endometrial cancer. She published this part of her work as co-first author in *Molecular Endocrinology*, the best journal in the endocrinology field. Furthermore, using the new techniques of transcriptional profiling, [the petitioner] has been able to define replication licensing as another major target for the P₄ inhibition of E₂-induced uterine epithelial cell proliferation. [The petitioner] made this research breakthrough since her data was the first to couple hormone action to DNA pre-replication in reproductive system. The results of this study finally published in prestigious journal *Proceedings of the National Academy of Sciences*. She also presented this gene profiling study at the Reproductive Tract Biology Gordon Research Conference in 2004. [The petitioner's] findings have been very well received in the whole international community. Many scientists around the world have cited her papers.

[The petitioner] has done important work that no one else in the world has done, studies, which have resulted in significant improvement of our understanding of sex steroid hormones regulation in normal reproductive process and in cancer of the reproductive system. This is fundamental research, and absolutely necessary if we are to understand how coordinated actions of E₂ and P₄ establish the transient receptive state for hatched embryo implantation as well as to provide information that could be relevant to our understanding of tumorigenesis, with estrogen being the primary risk factor for adenocarcinoma of the breast and endometrium. Particularly exciting are the novel mechanisms that she is uncovering in her research may have broad applicability to defining how P₄ is used therapeutically to inhibit the proliferation of estrogen-dependent endometrial cancer and to oppose estrogen action in postmenopausal women during hormone replacement therapy.

With regard to [redacted] comments regarding the petitioner's published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.⁵ To hold

⁵ 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

otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. 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 or presentation. [REDACTED] does not provide specific examples of how the results from the petitioner's published and presented work are being widely applied by others in the field or that they otherwise equate to original contributions of major significance in the field.

[REDACTED] Biostatistics, University of Medicine and Dentistry of New Jersey School of Public Health, states:

In her thesis study, [the petitioner] was the first to identify two novel signaling pathways which connect female steroid hormonal actions to uterine epithelial cell proliferation and differentiation. The results of her experiments point at potential crucial mechanisms involved in the genesis of breast and endometrial cancer. Even as a graduate student, she has made outstanding contribution and also received substantial attention in the field. For instance, her eminent work has resulted in three first-author publications in leading bio-medical journals. There are many articles citing her work with high regards. Her work was also received high appraisals from independent international reputed peers when presented in the most prestigious international conferences, Gordon Research Conference on Reproductive Tract Biology 2004, CT.

After graduation from Albert Einstein College of Medicine in 2006, [the petitioner] joined the Department of Microbiology at Columbia University of [sic] Medical Center as a Postdoctoral Research Scientist with a focus on the study of leukemia stem cells. . . . In collaboration with researchers at University of Rochester, where some of the pioneering work has been done on defining the tumor-initiating population in murine myeloid leukemia, she already successfully designed and built up an in vivo murine model to test the function of ZFX, a highly conserved transcriptional factor, in self-renewal of leukemia stem cell. [The petitioner's] study will gain a better understanding of how most leukemia patients relapse and may ultimately provide new avenues for developing therapies to treat myeloid leukemia.

[REDACTED] comments that the petitioner's study "will gain a better understanding of how most leukemia patients relapse and may ultimately provide new avenues for developing therapies to treat myeloid leukemia." With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how her past research achievements already qualify as original contributions of major significance in the field. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18

(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.

I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. [REDACTED] does not provide specific examples of how the petitioner’s work has already been utilized to develop successful therapies for treating myeloid leukemia.

Regarding [REDACTED] comments that the petitioner’s work has been cited by other scientific researchers, the petitioner’s appellate submission includes citation indices from Google Scholar indicating that her most frequently cited article entitled [REDACTED] has been cited to an aggregate of 38 times.⁶ There is no evidence showing that any of the petitioner’s remaining articles (such as her article in *Proceedings of the National Academy of Sciences of the United States of America*) had been cited to more than ten times as of the petition’s filing date. The petitioner has not established that this level of citation for her body of published work is indicative of original 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” in the field. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). To be considered a contribution of major significance in the field of biomedical 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 AAO acknowledges that the petitioner’s article with [REDACTED] in *Molecular Endocrinology* is well cited, but notes that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires original “contributions of major significance” [emphasis added] in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation.⁷ Therefore, even if the petitioner were to establish that her and her coauthors’ discovery of a novel signaling pathway that links Estradiol 17-β and

⁶ The article in *Molecular Endocrinology* was coauthored by the petitioner, her supervisor [REDACTED], and three others.

⁷ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(I)(2) requires a single degree rather than a combination of academic credentials).

Progesterone action to growth factor-mediated signaling in the uterus (published in *Molecular Endocrinology*) meets the elements of this criterion, which she has not, a single qualifying original contribution of major significance does not meet the plain language requirements of this criterion.

[REDACTED], Columbia University Medical Center, states:

In 2006, [the petitioner] joined my laboratory as a Postdoctoral Fellow to study the molecular mechanisms of stem cell function and cancer development.

* * *

In my own lab, [the petitioner] quickly became a leader in our efforts to understand the connection between normal stem cells and cancer. Her work builds upon our recent discovery of Zfx, a key regulator of stem cell function. [The petitioner] is now spearheading two important projects, focusing on the molecular mechanism of Zfx activity in stem cells and on its role in cancer development. . . . In the last year, [the petitioner] made incredible progress in her work, and is at the verge of major breakthroughs in these important lines of investigation. These studies should eventually lead to increased understanding of both stem cell function and cancer development, paving the way for better therapies needed for millions of Americans nationwide. [The petitioner's] extensive experience, scientific expertise and creativity, and dedication to research are key to the success of this project and other studies she will conduct in the future.

[REDACTED] opines that the petitioner is "at the verge of major breakthroughs" in her work at Columbia University Medical Center, but there is no documentary evidence showing that her work focusing on the molecular mechanism of Zfx activity in stem cells and its role in cancer development had already significantly impacted the greater field as of the date of filing so as to be considered a contribution of major significance. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] Division of Reproductive and Developmental Biology, Vanderbilt University Medical Center, states:

I came to know [the petitioner] at Gordon Research Conference on Reproductive Tract Biology in 2004, Connecticut. As a senior Ph.D. student in [REDACTED]'s lab, [the petitioner's] poster presentation attracted my attention because she first clearly demonstrated that two female steroid hormones estrogen (E₂) and progesterone (P₄) elegantly regulate replication-licensing process in uterine luminal epithelium. . . . Using the latest powerful techniques of microarray analysis, [the petitioner] beautifully identified that all six Mini-chromosome Maintenance (MCM2-7) was rapidly down-regulated by P₄ out of more than 27,000 mouse cDNA sequences. . . . Through various

molecular techniques, [the petitioner's] study further showed that P₄ regulated E₂-induced replication licensing by a number of novel mechanisms. The most significant one is that P₄ can sequester normally nuclear MCM proteins into cytoplasm in uterine epithelium. This finding has ground-breaking significance since MCM proteins were believed to retain in nucleus in almost all previous studies. The detailed results have been published in *Proceedings of the National Academy of Science USA*, one of the highest ranking journals in biomedical field. . . . The novel mechanism [the petitioner] has identified will eventually lead to new preventive methods and more effective therapies for these cancer and related diseases.

As a Ph.D. candidate, [the petitioner] has been highly productive since her thesis work has resulted in another two first-author papers in internationally recognized scientific journals, including *Molecular Endocrinology* and *Endocrinology*.

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

states:

Using the cutting edge technologies of large scale cDNA microarray, [the petitioner's] publication clearly demonstrated that components of the TLR4 pathway were dramatically up-regulated in the luminal epithelium, which further induced NFκB pathway activation in pre-implantation window. [The petitioner's] discovery first suggested that the uterus is primed to respond to pathogens that might have been introduced into the reproductive tract as a result of mating, which very well explained why infectious agents are a major cause of early pregnancy loss. This had made a major impact on my project and also the whole female reproductive field.

Comments that the petitioner's work published in *Endocrinology* had "a major impact" on his project, but he does not provide specific examples of how the petitioner's work has significantly impacted the field as a whole. Further, there is no documentation showing that the petitioner's findings in *Endocrinology* had been cited to more than ten times as of the petition's filing date. The petitioner has not established that this minimal level of citation is indicative of an original contribution of major significance. There is no evidence indicating that the petitioner's discovery reporting that the uterus is primed to respond to pathogens introduced into the reproductive tract

as a result of mating is frequently cited by independent researchers or otherwise equates to an original contribution of major significance in the field.

In response to the director's request for evidence, the petitioner submitted a second letter from [REDACTED] stating:

During 2009, [the petitioner] has made further progress in my lab, studying the regulation of stem cell function. To develop her findings towards future clinical applications, she has recently moved to the laboratory of [REDACTED], a world famous scientist at the National Institutes of Health. It is expected that [the petitioner's] work at the NIH would bring new important insights into stem cell biology, with important implications towards the treatment of many serious diseases including cancer.

[REDACTED] comments that the petitioner has made further progress in his laboratory, but he does not provide specific examples of how her research regarding the regulation of stem cell function has significantly influenced the field. There is no documentary evidence showing that the petitioner's work at Columbia University Medical Center has been frequently cited by independent researchers or otherwise impacted the field at the time of filing so as to be considered a contribution of major significance. Moreover, the petitioner's work under the supervision of [REDACTED] at NIH post-dates the petition's filing date. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner's response also included a letter from [REDACTED] stating:

I offered [the petitioner] a post-doctoral fellowship at the National Institute for Child Health and Human Development (NICHD), a unit of the National Institutes of Health in Bethesda, MD.

* * *

Upon completing her Ph.D., [the petitioner] joined the laboratory of [REDACTED] at Columbia University Medical School to expand her scientific experience into the area of stem cell research. . . . [The petitioner] studied the role of Zfx, a protein that acts as a major regulator of stem cell proliferation.

By combining two of the most current technologies in the field of molecular biology (tandem-affinity protein purification and mass spectrometry based polypeptide sequencing), [the petitioner] identified NSD 1, a histone methyltransferase, as the interaction partner of Zfx in stem cells. . . . Using a genetic engineered mouse model, [the petitioner] discovered that removal of the Zfx gene specifically damages the self-renewing ability of cancer stem cells, and thereby significantly delays the progression of myeloid leukemia. Thus, her research at the Columbia University Medical School has resulted in a critical and novel insight into the cause of this human disease, and has identified two new targets for development of therapies in the treatment of AML.

[The petitioner] is now extending that research in my laboratory at the NIH where she will undertake a leadership role in our program to develop novel cancer therapies based on the interruption of specific pathways that suppress aberrant DNA replication events during cell division. [The petitioner] will apply her unique expertise in the analysis of stem cell protein-protein interactions to determine whether or not our recent discovery that suppression of geminin activity in cultured cells can selectively kill cancer cells without affecting normal cells is applicable to preventing metastasis in whole animals.

There is no evidence showing the petitioner's discovery that removal of the Zfx gene damages the self-renewing ability of cancer stem cells is frequently cited by independent researchers or otherwise equates to an original contribution of major significance in the field. Further, [REDACTED] does not provide examples of how the petitioner's specific findings have actually been utilized to develop successful therapies for the treatment of acute myeloid leukemia. [REDACTED] comments on the petitioner's research in his laboratory, but her work there post-dates the petition's February 6, 2009 filing date. As previously discussed, eligibility must be established 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 work at NIH in this proceeding.

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. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a research scientist who has made original contributions of major significance. Without supporting documentary evidence showing that the petitioner's work equates to original contributions of major significance in her field, the AAO cannot conclude that she meets this criterion.

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

The petitioner has documented her authorship of nine scholarly articles and a conference presentation and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets this criterion.

Summary

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). Nevertheless, the AAO will review the evidence in the aggregate as part of its final merits determination.

B. Final Merits Determination

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

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii), the petitioner submitted copies of scientific articles citing to her work. As previously discussed, the submitted articles are primarily about the authors' own work or recent trends in the field, and are not about the petitioner or even her work. The petitioner has not established that the articles citing to her work are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

Regarding the petitioner's original research findings discussed under 8 C.F.R. § 204.5(h)(3)(v), as stated above, they do not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a medical researcher of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the petitioner has published scholarly articles with her superiors, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at www.bls.gov/oco on August 25, 2011 and incorporated into the record of proceedings), provides information about the

nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://www.bls.gov/oco/pdf/ocos066.pdf>. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* Further, the OOH states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." See <http://www.bls.gov/oco/pdf/ocos047.pdf>. This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond her own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. As previously discussed, the documentation submitted by the petitioner indicates that one of her articles (published in *Molecular Endocrinology*) has been well cited as of the petition's filing date. However, there is no evidence showing that any of the petitioner's remaining articles had been cited to more than ten times as of the petition's filing date. The level of citation to the petitioner's body of published work at the time of filing is not sufficient to demonstrate that her articles have attracted a level of interest in the field commensurate with sustained national or international acclaim at the very top of the field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies primarily on her publication of nine scholarly articles with her superiors, a conference presentation with [REDACTED] citation evidence indicating that one of her articles published in 2005 has been well cited, and the praise of her references. The AAO notes that the petitioner's role at AECOM was that of a student. Moreover, the petitioner's postdoctoral fellowships at Columbia University Medical Center and the NICHD are designed to provide specialized research experience and training in her field of endeavor.⁸ The AAO further notes that many of the petitioner's references' credentials are far more impressive than those of the petitioner. For example, [REDACTED] states:

I served as a Professor at Harvard Medical School (1973-1986), a Full Member of the Roche Institute of Molecular Biology (1986-1995), Adjunct Professor at Columbia University during the same period, and most recently as Chief of a research section in the National Institute of Child Health and Human Development at the National Institutes of Health (1996-present). I have published over 180 scientific reports and reviews, and I have edited 8 books, the vast majority of which are in the fields of genome duplication and animal development. I also have mentored over 60 post-doctoral scientists and Ph.D. students, served on several editorial boards for several international journals, grant

⁸ "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." See <http://www.bls.gov/oco/pdf/ocos047.pdf>, accessed on August 25, 2011, copy incorporated into the record of proceedings.

review committees including NIH, NSF and American Cancer Society, and received several awards, among them the Humboldt fellowship.

states:

I trained at Harvard Medical School with [REDACTED] one of the founding fathers of molecular genetics and a laureate of most prestigious awards including the National Medal of Science. In 2003, I have been appointed a tenure-track Assistant Professor of Microbiology at Columbia University Medical Center. The work in my lab is supported by major national agencies including the National Institute of Allergy and Infectious Diseases, the National Heart, Blood and Lung Institute, and American Cancer Society.... My lab's recent discovery of a key stem cell regulator was published as a Featured Article by the most prestigious biology journal, *Cell*, and reported by major media outlets including Reuters and CNN.

states:

I currently hold the position of Associate Professor in Reproductive and Developmental Biology Division at Vanderbilt University Medical Center. . . . As one of the leading scientists in this field, I have published over 100 peer reviewed articles in highly reputed journals such as *Science*; *Cell*; *Proceedings of the National Academy of Science USA*; *Molecular Endocrinology* and *Endocrinology* just to give you few. . . . I am frequently invited to give seminars both in the U.S. and internationally. In addition, I have served as a reviewer for several NIH grants and over twenty internationally recognized scientific journals including *Molecular Endocrinology*, *Endocrinology* and *American Journal of Obstetrics and Gynecology*.

states:

I am currently the chairman of the [REDACTED]
[REDACTED] . . . I have served as grant reviewer for a number of major Korean funding agencies including KNIH, Korean National Science Foundation (NSF) and Korean Research Foundation. As a leading scientist, I also served as editorial board member for many journals such as *Faseb Journal* and *Journal of Life Science*.

states:

I am currently a Deputy Director of the [REDACTED] . . . Before this I was Associate Director for Laboratory Research at this center beginning in 1993. I played a key role in designing the evolving organization of the cancer Center and the implementation of new research program initiatives. I also brought to this position my perspective and experience as Director of the Reproductive Biology and Women's Health Center. . . . I have been continuously funded by National Institute of Health and I have published about 180 professional articles. I have served as grant reviewer for a number of

prestigious U.S. and international funding agencies including NIH, NCI and Medical Research Council in Canada, Wellcome Foundation and Medical Research Council in Britain. I also served as editorial board member for many top journals, such as *Molecular Oncology* and *International Journal of Cancer*.

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

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

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

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

ORDER: The appeal is dismissed.