



U.S. Citizenship  
and Immigration  
Services

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DATE: **SEP 28 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 "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 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.

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On appeal, counsel argues that the petitioner meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iv), (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. 723 101<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.* 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 (9<sup>th</sup> 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.

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

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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).

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 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).

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on June 22, 2009, seeks to classify the petitioner as an alien with extraordinary ability in energy research, mechanical engineering, and nuclear engineering. The petitioner submitted a June 20, 2009 letter with the petition stating:

I earned my Ph.D. degree in Mechanical Engineering from [REDACTED] in July 2007. I obtained my Master's Degree in Mechanical Engineering from [REDACTED] in May 2004.

My specific research areas include nuclear energy, nuclear waste disposal technology, and solar energy. My research also covers the interdisciplinary fields of computational fluid dynamics (CFD), material science, mesoscopic dynamics and nano technology.

At the time of filing, the petitioner was working as a postdoctoral researcher at [REDACTED] under the supervision of [REDACTED], Professor, Department of Mechanical Engineering, [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<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.*

[REDACTED]

[REDACTED]. The petitioner did not submit evidence of the national or international *recognition* of the preceding Best Paper awards, such as national or widespread local coverage of the awards in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish

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

every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's Best Paper awards were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that he meets this criterion.

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

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

In addressing the documentation submitted for this regulatory criterion, the director's decision stated:

The petitioner bases his claim to this criterion upon his membership in Sigma Xi, the American Nuclear Society (ANS), the American Society of Mechanical Engineers (AMSE), the Informal Heavy Liquid Metal Coolant Interest Group (IHLMCIG) and the Chinese in America Thermal Engineering Association (CATEA). The evidence submitted regarding Sigma Xi's membership requirements states that "Any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science or engineering," and then defines "noteworthy achievements" as "publication as a first author on two articles in a refereed journal, patents, written reports, or a thesis or dissertation." Researchers are expected to publish their findings, and all postdoctoral researchers will have already completed a dissertation as part of their education. Therefore, these requirements do not reflect outstanding achievements in the petitioner's field. Similarly, ANS requires only an associate[']s degree in nuclear science or a related field or one year of work experience in the field, and ASME appears to require a degree in engineering or engineering technology. However, employment or education in a field do not constitute outstanding achievements.

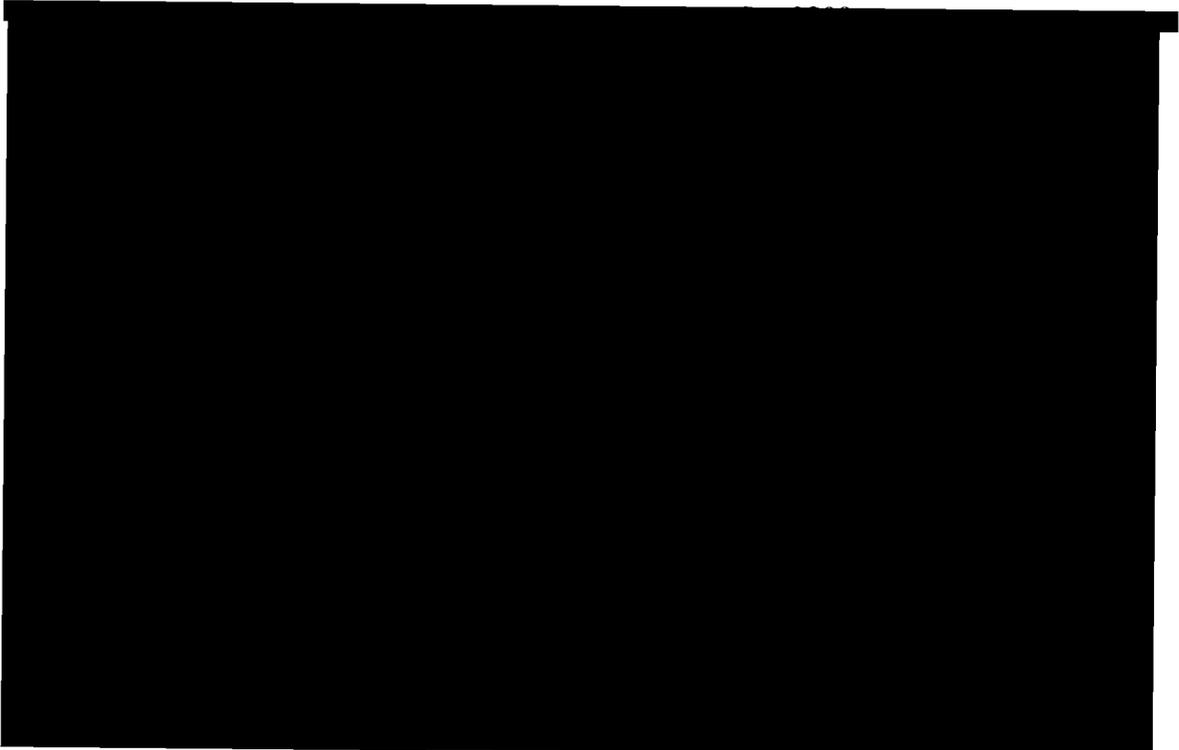
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*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner initially submitted documentation indicating that [REDACTED] the petitioner's former graduate studies advisor and current supervisor at [REDACTED] assigned him manuscripts to review for *Journal of Heat Transfer* and *Nuclear Engineering and Technology*. The record contains no review requests directly from the preceding journals' editors addressed to the petitioner. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of a supervisor requesting input and assistance from his subordinate. In this instance, there is no documentary evidence establishing that the petitioner, rather than [REDACTED] served as part of a formal judging process for *Journal of Heat Transfer* and *Nuclear Engineering and Technology*.

The petitioner also submitted evidence that he peer reviewed the following:

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- 2.
- 3.
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- 8.
- 9.
- 10.
- 11.
- 12.
- 13.



In response to the director's request for evidence, the petitioner submitted documentation indicating that he completed review of a paper for [REDACTED] in January 2010, two papers for [REDACTED] (017) in December 2009, and an additional paper for [REDACTED] in November 2009. The petitioner completed the preceding reviews for [REDACTED] subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider papers reviewed by the petitioner after June 22, 2009 in this proceeding.

Thus, the documentation submitted by the petitioner demonstrates that he peer-reviewed six papers for [REDACTED] two papers for [REDACTED] a book chapter, and four conference papers as of the petition's filing date. This documentation meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

The petitioner submitted several letters of support discussing his work.

[REDACTED] states:

For the past 7 and half years, I have been [the petitioner's] advisor for his M.S. and Ph.D. studies in the Department of Mechanical Engineering, and the supervisor for his post-doctoral appointment . . . at UNLV.

\* \* \*

[The petitioner] has successfully developed a series of new stochastic models on corrosion/oxidation in non-isothermal nuclear coolant systems with the cellular automaton (CA) method at a mesoscopic level. And he successfully coupled the hydraulic effect of the high-temperature and high-density metal/alloy flow in his stochastic CA models. These reliable computer programs developed by [the petitioner] make it possible to track the evolution of molecule ensembles on the mesoscopic physical level.

\* \* \*

Another evidence of the petitioner's extraordinary abilities lies in his publications and presentations. [The petitioner] has published 9 journal papers in several peer-reviewed

[REDACTED]

The citations for [the petitioner's] journal papers are not many at this moment because [the petitioner's] journal papers were just published in 2008 and 2009 due to the long peer-review processes. Moreover, his research methods are unique and his models are novel so that not too many research institutes are aware his new methods and techniques yet. With the continuous developing of these new techniques, such as the stochastic modeling of nuclear coolant corrosion at a mesoscopic level, more and more scientists and corrosion research group will cite his research results in this field.

With regard to the new stochastic models developed by the petitioner, [REDACTED] does not provide specific examples of how the petitioner's models are being widely implemented by others in the engineering field or in the nuclear power industry. Regarding [REDACTED] comments on 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.<sup>3</sup> To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. 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 his article or presentation.

In response to the director's request for evidence, the petitioner submitted citation evidence indicating less than a dozen cites to his body of published work. Four of the citing articles submitted by the petitioner reflect self-citations by his supervisor and coauthor [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The AAO cannot ignore [REDACTED] comment acknowledging the limited number of cites to the petitioner's work. In this case, the petitioner has not established that the minimal number of independent cites to his work at the time of filing is indicative of original contributions of major significance in the field. Moreover, the articles citing to the petitioner's work after the date of filing do not constitute evidence that his work was already influential as of that date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that the petitioner must demonstrate that his work had already significantly

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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.

impacted the field as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4<sup>th</sup> Cir. 2008). Accordingly, while citations published after the date of filing may serve as evidence of the continued relevance of an alien's work that had already been well cited as of the filing date, they cannot be considered evidence that the alien was already influential as of that date. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that his work might prove influential while the petition is pending. Thus, the AAO will not consider cites to the petitioner's work after June 22, 2009 in this proceeding.

states:

[The petitioner] has been working in two projects of the [redacted] Transmutation Research Program [TRP] for which I am the director. One project is the design and simulation of an induction skull melting system to cast metallic fuel pins for Fast Neutron Nuclear Reactors from recycling spent nuclear fuel components which includes americium, a volatile actinide with long-term hazard. His innovative design has been selected as a candidate by the U.S. Department of Energy (DOE) national program and his numerical models and simulated results have been praised by the scientists in nuclear engineering as a remarkable contribution to the nuclear energy and nuclear waste management technology.

The second TRF project [the petitioner] has been working on is the theoretical investigation and numerical modeling of the protective oxide layer growth in non-isothermal lead-alloy coolant systems. [The petitioner] is the pioneer in the stochastic modeling of the corrosion and oxidation process of nuclear metal/alloy coolant at a mesoscopic level. His creative methods have been published in top peer-reviewed journals, such as, [redacted]. His innovative models and calculated results have also been invited for publishing in [redacted] because their significance to the nuclear power industry.

\* \* \*

His inventions include the innovative designs for casting metallic fuel pins from nuclear waste and his ingenious mesoscopic models for estimating the corrosion process of the

nuclear coolant and the protection of the oxide layer by oxygen control technology. [The petitioner's] research is a great improvement in the application of nuclear waste disposal technology and nuclear coolant technology.

█ does not indicate that █ has patented, licensed, or marketed the petitioner's designs for casting metallic fuel pins from nuclear waste or his mesoscopic models. Thus, the impact of the inventions is not documented in the record. Regarding the petitioner's journal publications, the AAO notes that his 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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). 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. In this case, there is no evidence showing that the petitioner's articles in █

█ are frequently cited, that his designs and models are widely implemented in the industry, or that his work otherwise constitutes original contributions of major significance in the field.

█ states:

During the year 2004 to year 2008, I severed [sic] as an adjunct research faculty of the █. I was a co-advisor of [the petitioner] during the period.

\* \* \*

Over the past five years, I have collaborated with [the petitioner] on a nuclear engineering project funded by the Department of Energy of U.S.

\* \* \*

I would like to specifically focus on [the petitioner's] exceptional contributions to the stochastic modeling of corrosion/oxidation processes of stainless steels in lead/LBE at a mesoscopic level. These models propose an accurate estimation of the long term behaviors of the nuclear materials in nuclear coolants. They provide a mesoscopic and microscopic level understanding on the unclear mechanisms in the nuclear coolant technology, which will result in a substantial advancement for the field of nuclear science and mechanical engineering. The programs developed by [the petitioner] are able to lower the cost of the experiments and predict the safety problems in the nuclear industry

and reduce them by a substantial percentage. Therefore, his studies will have large impact on the U.S. nuclear industry and thereby on energy independence of U.S. The mesoscopic stochastic models are also capable to provide a scheme for the investigation of nano materials.

opines that the petitioner's work "will have a large impact on the U.S. nuclear industry," but he does not provide specific examples of how the petitioner's models are already being applied by others in the field or that they otherwise equate to original contributions of major significance in the field. 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. 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. at 175.

states:

As an adjunct professor and technical advisor I have known [the petitioner] . . . from his his application materials for a prestigious and demanding Master's program in the Nevada Center for Advanced Computational Methods (NCACM) in the in 2002.

\* \* \*

I should first emphasize on [sic] the challenging project on which [the petitioner] was working on with me during his master's program, the Design and Simulation of an Induction Skull Melting System. It was a DOE sponsored project in cooperation with

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The critical difficulties in the melting of the americium contained nuclear waste, which had remained unsolved, lie in the high melting point and the serious volatility of americium. With his industrious investigation and intelligence, [the petitioner] proposed several possible designs for the melting systems of highly hazardous and highly volatile americium and the casting process of the metallic pins. After comparing [the petitioner's] different design schemes and the calculated results from [the petitioner's] computational fluid dynamics (CFD) simulation, the Induction Skull Melting System with water cooling crucibles, has been selected by ANL and DOE as the final solution for the casting process of metallic fuel pins. From the experiments in ANL, his method has proved to be safe, efficient and feasible. The experimental data agrees with [the petitioner's] CFD simulated results significantly. Furthermore, his CFD model, which had been benchmarked by ANL's experiments, has been employed by ANL and DOE for parametric study of the casting process under different operating conditions. His CFD model resolves the

difficulties of conducting large amounts of experiments under hazardous conditions, which is also economically impossible.

does not provide specific examples of how the petitioner's CFD model been utilized by others in the field beyond his immediate projects, successfully applied in the industry, or that it otherwise constitutes an original contribution of major significance in the field.

states:

In August 2007, [the petitioner] submitted his first paper to an improved mesoscopic oxidation model of metals in lead bismuth eutectic. It was accepted in October 2007. His second paper, a diffusion controlling duplex-layer oxidation model with scale removal in oxygen containing liquid metal flow, which was submitted in October 2007, has been accepted in May 2008. Both these two papers have been published in 2008.

In the first paper, [the petitioner] proposed an innovative scheme in the calculation of the oxide layer growth in liquid alloy systems, with consideration of the transport of oxygen into the stainless steel. He is the first scientist who uses this new probabilistic method to estimate the chemical reaction process considering the effective diffusion in mode of "random walk" of atomic oxygen along the grain boundaries in the structural materials. This mesoscopic level cellular automaton (CA) model has been successfully used to estimate the chemical process, the mass transfer process and the growth of the protective oxide film in liquid alloy nuclear coolants. The creative analysis has discovered the unclear transport mechanisms of the atomic oxygen in stainless steels. [The petitioner] has played a key role in the research of interdisciplinary field of computational material science and computational fluid dynamics, especially at a mesoscopic level.

In the second paper that [the petitioner] published in he developed a macroscopic numerical model to calculate the duplex oxide layer growth in oxygen contained environments, such as nuclear coolant under oxygen control technology. The scale removal effect, which is a complex process and is difficult to simulate numerically, of the oxide film in the high density, high temperature flow, has been taken into accounted successfully.

\* \* \*

[The petitioner's] mesoscopic oxidation model reveals the mechanisms of the chemical process and the transport process of the atoms. And his macroscopic model estimates these processes from the point view of macroscopic phenomena. Both the mesoscopic and the macroscopic models have been benchmarked with experimental data, previous numerical results and/or analytical solutions. These remarkable models demonstrate [the petitioner's] extraordinary research abilities clearly. These models proposed different

research methodologies in the research of corrosion and passivation of corrosive nuclear coolant, which is critical to the nuclear power industry of U.S. Moreover, these models can be extended to the study on corrosion/oxidation of other metal/alloy materials in different liquid environments, and thereafter can benefit evidently the development of the material industry, the power industry of U.S.

comments on two of the petitioner's articles published in but there is no evidence showing that the petitioner's articles were frequently cited, that his mesoscopic and macroscopic models are widely implemented in the power industry, or that his work otherwise equates to original contributions of major significance in the field.

states:

After being invited to give a graduate seminar at in March 2009, I met [the petitioner]. From the first discussion and further communication with him, I could tell that he has an outstanding research ability, creative scientific perceptions, and productive achievements.

\* \* \*

In one of his numerical models, [the petitioner] used the coordinate transformation technique to simplify the complex governing equations on oxidation growth process in different physical zones. The simplified equations have been in analogy with Stefan problem and been solved numerically with his own programmed code.

does not provide specific examples of how the petitioner's work is being applied by others in the field or that it otherwise equates to original contributions of major significance in the field.

states:

[The petitioner] illustrated the mesoscopic level investigation on the oxide layer growth of stainless steel in liquid lead-bismuth eutectic (a nuclear coolant) using a stochastic cellular automaton model. This method is an innovative approach as opposed to the traditional macroscopic computational fluid dynamics (CFD) models. The traditional CFD models study the fluid, both the liquid and the gas, as a continuum media and have not delved into the detailed mechanisms and movement of the molecules and atoms. . . . [The petitioner's] research on mesoscopic investigation bridges the gap between the macroscopic phenomena and microscopic principles.

\* \* \*

[The petitioner's] models successfully estimate the transport of the dissolved oxygen into the stainless steels with a much higher transport rate than the molecular diffusion rate. His research results discovered the unclear transport mechanism of oxygen which has puzzled the scientists and engineers for many years in the fields of material science. [The petitioner's] stochastic mesoscopic models, in the interdisciplinary fields of fluid mechanics and materials science, have been used in the calculation of the corrosion rate of nuclear coolants and the protection of the oxide layers. . . . The calculated results from [the petitioner's] mesoscopic models provide a guideline in the nuclear materials selection and the anti-corrosion techniques for the new generation nuclear reactors in U.S.

states that the petitioner's stochastic mesoscopic models "have been used in the calculation of the corrosion rate of nuclear coolants and the protection of the oxide layers," but the documentation submitted by the petitioner does not reflect widespread industrial or commercial implementation of the petitioner's methods or that they otherwise equate to original contributions of major significance in the field.

states:

Ever since [the petitioner] joined the FMTC in 2008, I have been impressed with his extraordinary research capabilities, from his outstanding publications in ASME conferences to his accomplishments in probabilistic modeling approaches in the fields of fluid mechanics and material science. His analysis skills and design methodologies are critical to the success of projects, such as, the conceptual design, the performance evaluation and the design optimization of solid particle solar receivers (SPSR), and the casting metallic fuel pins from long-term radioactive nuclear waste, etc.

\* \* \*

[The petitioner's] solid theoretical background in mechanical engineering provides him the necessary insights to resolve difficult issues. He has considerable expertise in the commercial software FLUENT plus his solid structural design experience make him one of the top solar receiver designers in the solar-hydrogen area.

\* \* \*

It is my understanding that [the petitioner] is the first scientist to conduct a domain-independent study on the numerical simulation of an objective in a strong wind field, which is of technological significance for the SPSR mounted atop a tower 330 meters high to capture the focused solar energy from a field of heliostats. The domain-independent study minimizes the computational time required for a single simulation without losing numerical accuracy. This pre-simulation concept has proved to be a major



[The petitioner's] research on the corrosion of nuclear coolant and anti-corrosion technology of nuclear materials has significant importance to the safety of nuclear power systems. . . . He is the forerunner of mesoscopic modeling on the corrosion and oxidation behaviors of nuclear materials in nuclear coolant environment.

\* \* \*

[The petitioner] has submitted 11 journal papers to different peer-reviewed journals. . . . [The petitioner's] papers have been published officially in 2008 and 2009 and his research is in a particular field of nuclear engineering and renewable energy. From a scientist with strong background in nuclear engineering and mechanical engineering, I assert [the petitioner's] journal publications are of very professional and of significant importance, even though they do not have too many citations yet.

comments that the petitioner's "final design and his numerical models on the melting process of nuclear materials, americium and the casting process of metallic fuel pins is a milestone achievement of the reuse of nuclear waste to generate nuclear power," but he does not provide specific examples of industrial or commercial implementation of the petitioner's work. Further, there is no evidence showing that the petitioner's journal publications were frequently cited at the time of filing, that his numerical models are being widely applied by others in the engineering field, or that his findings otherwise equate to original contributions of major significance in the field. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his methodologies are novel and useful, but also that they have already made a demonstrable impact on his field as a whole.

states:

I served as an Assistant Professor in the Department of Mechanical Engineering at the from August 2005 to June 2008.

\* \* \*

[The petitioner] worked on a very difficult problem associated with the corrosion of liquid metal/alloy nuclear coolant and the oxide layer growth on the surface of stainless steel in nuclear coolants in the interdisciplinary field of computational fluid dynamics and computational material science. This challenging work requires an intensive understanding on the fluid dynamics, heat and mass transfer, material science and computational methodologies. [The petitioner] successfully proposed various models to calculate the complex processes. In the 2<sup>nd</sup> chapter of his dissertation, he developed both analytical and numerical models for corrosion/precipitation of stainless steels in non-isothermal lead/lead bismuth eutectic (LBE) open pipes and close loops. In the 3<sup>rd</sup> chapter, he proposed a macroscopic numerical model for the growth of the oxide layer on the metal/alloy materials in oxygen contained environment. As I know, the models and

the results of three chapters are published in three refereed journals respectively. In my opinion, this dissertation is an excellent example of his extraordinary abilities to perform high quality research.

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. While [REDACTED] comments that the results of the petitioner's graduate work at [REDACTED] have been "published in three refereed journals," there is no evidence indicating that his findings are frequently cited by independent researchers or otherwise equate to original contributions of major significance in the field.

[REDACTED] Canadian Nuclear Safety Commission, states:

At the 12<sup>th</sup> International Conference on Nuclear Engineering (ICONE-12) in Arlington, which I attended as the lead track 2 Organizer and track Chair, [the petitioner] presented two papers on numerical simulations on casting a fuel pins [sic]. I was indelibly impressed with his presentation. The quality of his work was of the highest standards of excellence. [The petitioner] describes the most recent experimental data and the model developed to support design of a mold for casting fuel elements and the associated transient heat transfer.

There is no evidence showing that the technical papers presented by the petitioner at ICONE-12 are frequently cited by others in his field. Further, the documentation submitted by the petitioner does not reflect industrial or commercial implementation of the petitioner's numerical simulations for casting fuel pins or that they otherwise constitute original contributions of major significance in the field.

[REDACTED] Nuclear Energy Agency, states:

I am involved in particular in the development of . . . the lead-cooled fast reactor (LFR) development.

[The petitioner] also contributed to the LFR project. The first time I met him was in June 2006 in Reno . . . where he attended the 1<sup>st</sup> Meeting of GIF [Generation IV] LFR Interest Group held by [REDACTED] and where I provided the technical secretariat for the meeting.

[The petitioner] has been working on the lead/lead-bismuth eutectic (LBE) corrosion and growth of the protective oxide layer of stainless steels projects since 2004 under the

direction of [REDACTED], in collaboration with [REDACTED] (from Los Alamos National Laboratories) and [REDACTED]. He has a relevant number of technical publications in different journals and also participated in internationally respected technical conferences on lead and LBE research. He also worked on a project on the casting process of metallic fuel pin and on solar energy based hydrogen generation.

[REDACTED] describes the petitioner's work, but he does not provide specific examples of how the petitioner's work has notably influenced the field. There is no evidence showing that the petitioner's published and presented research is frequently cited, that his innovations are widely implemented in the industry, or that his work otherwise constitutes original contributions of major significance in the field.

The AAO notes that almost all of the above letters are from individuals directly associated with the petitioner, his research projects, or [REDACTED]. While such letters are important in providing details about the petitioner's work on various projects, they cannot by themselves establish that his work is recognized beyond his professional contacts. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an engineering researcher who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, the AAO cannot conclude that he 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 his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that he meets this criterion.

### *Summary*

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility

requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, 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 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (v).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. The evidence discussed above is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. The AAO notes that competition for the petitioner’s “Best Student Paper” award was limited to graduate students. Such awards do not establish that the petitioner “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). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994); 56 Fed. Reg. at 60899.<sup>4</sup> Likewise, it does not follow that receiving an award limited to students should necessarily qualify an engineering researcher for approval of an extraordinary ability employment-based immigrant visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

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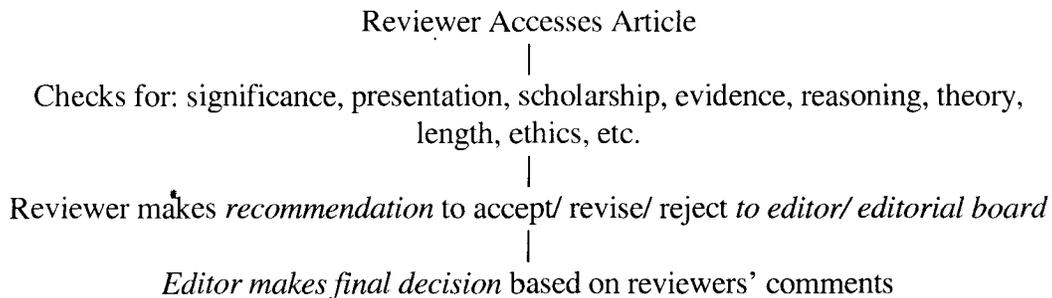
<sup>4</sup> The AAO notes that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) is reasonable.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner's associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his national or international acclaim. *See Kazarian*, 596 F.3d at 1122. The documentation submitted by the petitioner demonstrates that he peer-reviewed six papers for *Solar Energy*, two papers for *Computational Materials Science*, a book chapter, and four conference papers as of the petition's filing date. In response to the director's request for evidence, the petitioner submitted Springer "Peer Review Guidelines for Authors and Reviewers" stating that the "Managing Editor's judgment is final with regard to suitability for publication." The petitioner also submitted a peer review diagram from Elsevier's website stating:



[Emphasis added.]

According to the preceding information, the decision of the editorial staff supersedes that of the peer reviewers who issue only recommendations. The director found the petitioner failed to establish that his level and frequency of peer review is commensurate with sustained national or international acclaim and sets him apart from others in his field. The AAO upholds this finding noting that peer review is a routine element of the process by which articles are selected for publication in scientific journals or for presentation at professional conferences. Normally a journal or conference's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for the editorial staff to ask multiple reviewers to review a manuscript and to offer comments. As noted in the information from publishers Springer and Elsevier, the editorial staff or may accept or reject any peer reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals, chaired a significant number of reputable conferences, or served in an editorial position for a distinguished journal as of the petition's filing date, the AAO cannot conclude that his level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of

the field of endeavor. For instance, according to [REDACTED] his curriculum vitae, he has served on the editorial boards of *Open Corrosion Journal* and *Protocells*. Further, [REDACTED] has chaired numerous conferences and [REDACTED] serve as editors of scientific journals.

With regard to the petitioner's original research work submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as stated above, it does 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 an engineering 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." In this case, the record does not contain sufficient evidence that the petitioner's research findings and models had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary.

Regarding the documentation submitted for the category of evidence 8 C.F.R. § 204.5(h)(3)(vi), the AAO acknowledges that the petitioner has coauthored scholarly articles with his superiors at UNLV (such as Dr. Chen). The Department of Labor's (OOH), 2010-11 Edition (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on September 1, 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.* 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 his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. As previously discussed, the petitioner submitted evidence of less than a dozen cites to his body of work as of the petition's filing date. This minimal level of citation is not sufficient to demonstrate that the petitioner's articles have attracted a level of interest in his 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, a postdoctoral researcher, relies on Best Paper awards that are not commensurate with nationally or internationally recognized prizes or awards for excellence in the field, professional memberships

which have not been shown to require outstanding achievements, his participation in the widespread peer review process, less than ten journal articles published with his superior [REDACTED] at the time of filing, conference presentations with [REDACTED] citation evidence indicating that the petitioner's work has been only minimally cited, his temporary training roles as a graduate student and a postdoctoral researcher, and the praise of his references.

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

I hold a professorship in the Department of Mechanical Engineering at the [REDACTED] [REDACTED] I am also Co-Director of the Center for Energy Research (CER) at [REDACTED] Currently, I am President of the Chinese in America Thermal Engineering Association (CATEA). I am the technical reviewer for 16 journals, chair, co-chair and technical reviewer for over 20 international conferences. . . . My research experiences include being PI [Principal Investigator] and Co-PI on different projects. The research funding amounted to more than \$8.85M from Department of Energy (DOE), Department of Defense (DOD), Environmental Protection Agency (EPA), National Science Foundation (NSF), National Aeronautics and Space Administration (NASA), National Oceanic and Atmospheric Administration (NOAA), Sandia National Laboratories (SNL), Clark County of the state of Nevada, and private sectors. . . . In my professional career, I am the author or co-author of nearly 350 technical journal and conference papers and 100 technical presentations in different fields . . . .

[REDACTED] is a Professor of Strength of Materials and Materials Science at the [REDACTED] [REDACTED] According to his resume, [REDACTED] [REDACTED] also serves on the editorial board of *Journal of Physical Mesomechanics* and has authored more than 300 papers, 4 book chapters, and 2 books.

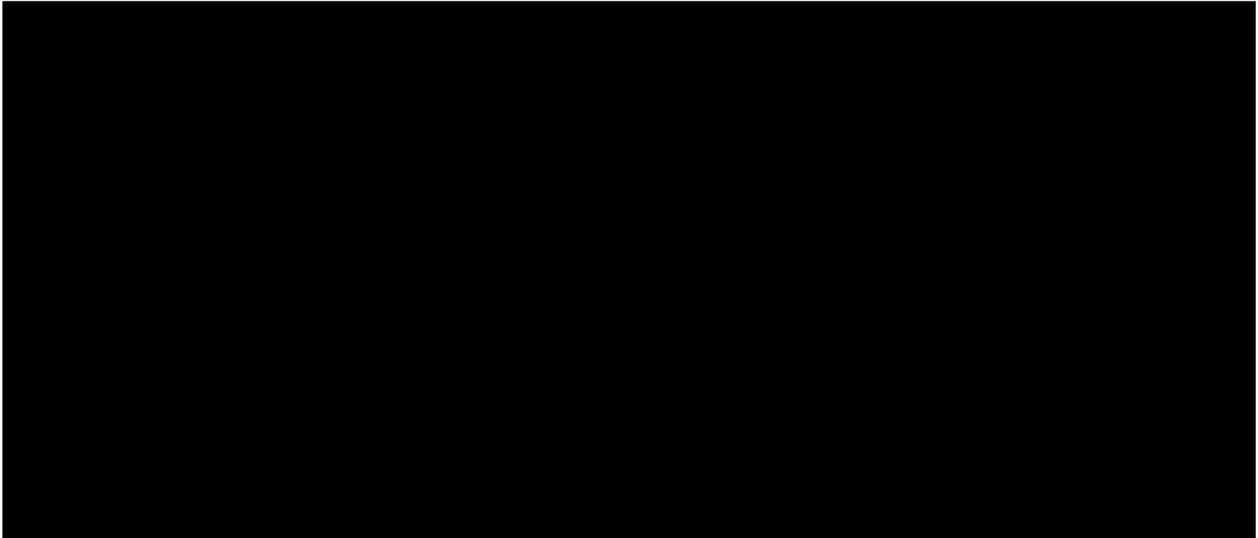
[REDACTED] states:

I have published over 100 technical papers in various archival journals and conference proceedings and have authored two books covering a wide range of thermal science fields including thermodynamics, single and two-phase flows, and phase-change heat transfer mechanisms. I am also a member of a number of technical committees on Nuclear Reactor Engineering, Technology and Safety, and currently am serving as the Chair of the Technical Programmes at the Executive Committee of the Nuclear Engineering Division of the American Society of Mechanical Engineers . . . .

[REDACTED] states that he has "published about 60 papers in journals, conferences and reports." According to his curriculum vitae, [REDACTED] has served on the editorial boards of *Open Corrosion Journal* and *Protocells*.

██████████ Professor and Chair of the Department of Mechanical Engineering at the ██████████. According to his resume, he has authored 42 publications and 17 conference presentations.

██████████ states:



Further, according to his resume, ██████████ has served in an editorial capacity for numerous journals. For example, ██████████ of *International Journal on Architectural Science* and *International Journal on Engineering Performance-Based Fire Codes*.

██████████ states:

I am currently an Assistant Professor in the Department of Aerospace Engineering at ██████████. I have authored/coauthored over 100 research publications, and have been invited to give more than 10 talks worldwide. I am an active ASME member and technical reviewer for over 20 peer-reviewed journals.

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

### III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or

international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

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

**ORDER:** The appeal is dismissed.