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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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[REDACTED]

DATE: **SEP 28 2011** Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

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

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

On appeal, the petitioner submits a brief offering no additional documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

## **I. Law**

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

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

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

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

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

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

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

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

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

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

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

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

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

*Id.* at 1119-20.

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

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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).

F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

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

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

The petitioner submits a travel grant in the amount of [REDACTED]. The director did not address this criterion. The [REDACTED] issued the grant to help finance the petitioner's attendance at a conference in August of 2003. Specifically, [REDACTED] subtracted the travel grant amount from the petitioner's registration fee. [REDACTED] issued the grant based on one of the petitioner's unidentified poster abstracts. The petitioner characterizes the travel grant as an award. The petitioner did not submit evidence to establish that [REDACTED] issues travel grants based on excellence in the field of endeavor.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "awards" or "prizes" in the plural, which 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.<sup>3</sup> Thus, the travel award from [REDACTED] cannot serve to meet this regulatory 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.*

The petitioner submits evidence of membership in [REDACTED]. The director did not address this criterion. The submitted material about [REDACTED] invites to full membership to "any individual who has shown noteworthy achievement as an original

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

<sup>3</sup> 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(l)(2) requires a single degree rather than a combination of academic credentials).

investigator in a field of pure or applied science....” The petitioner however did not submit evidence to indicate what [REDACTED] considers to be a noteworthy achievement.<sup>4</sup> Without such evidence, the petitioner cannot establish that a noteworthy achievement is necessarily an outstanding achievement anticipated under this regulatory criterion.

The petitioner notes that more than 170 members of [REDACTED] have won the Nobel Prize. The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That [REDACTED] includes members who have won the Nobel Prize does not impart that distinction to the vast majority of its members who have not been so recognized. It remains, a “noteworthy” achievement, as defined by the society, is not an outstanding achievement which is required by the plain language of the regulation. Thus, the petitioner’s membership in [REDACTED] cannot serve to meet this criterion. The petitioner also provided no evidence indicating that admittance to the organization is judged by recognized national or international experts in the field which is part of the plain language requirement of this regulatory criterion.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of “membership in associations” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. As stated above, the AAO can infer that the regulatory criteria in the plural have meaning. Thus, even if the AAO viewed [REDACTED] as an organization which requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields, which it does not, the petitioner’s membership in Sigma Xi alone cannot serve to meet this criterion.

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

The petitioner submits four articles as evidence under this regulatory criterion. The director determined the petitioner did not meet the requirements of this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to his work. The record contains three review articles that cite the petitioner’s work in a footnote in addition to citing numerous articles from others in the field. The fourth article appears in a magazine, *Drug Discovery and Development*, and references an interview of the petitioner from another magazine. The petitioner submits no evidence to establish *Drug Discover and Development* is a professional or major trade publication or other major media as required by this criterion. The articles are about recent innovations in the petitioner’s field of endeavor and are not about the petitioner as required by the regulatory criterion. In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

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<sup>4</sup> [REDACTED] bylaws define a noteworthy achievement as, “must be evidenced by publications, patents, written reports or a thesis or dissertation.” See <http://www.sigmaxi.org/about/organization/bylaw.shtml> accessed on September 15, 2011.

*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 submits evidence of seven emails from the editorial staff members of scientific journals requesting his services to peer review articles. The record also includes the petitioner's review of each of the articles. The director determined the petitioner did not meet the requirements of this criterion.

The petitioner provided evidence accompanying his initial filing indicating he had been invited to serve as a session chair and co-chair at scientific two scientific conferences. The petitioner did not indicate the regulatory criterion to which USCIS should apply this evidence. The director's decision applied this evidence to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), as the judge of the work of others. On appeal, the petitioner does not refute the director's decision to equate serving as chair and co-chair at these conferences under the judging the work of others criterion.

The petitioner's brief supporting the appeal indicates that a supporting letter from [REDACTED] Programming co-chair of the conference in which the petitioner was the session chair" identifies the role of the session chair at the 2009 scientific conference, which among other duties was to "review and accept abstracts submitted to the session, and schedule the timing of contributions within the session. By means of selecting speakers for their respective sessions, the Session Chairs have responsibility and authority to highlight and influence the present and future direction of electrophoresis research." The record contains this letter from [REDACTED] which the petitioner provided in response to the director's request for evidence.

On appeal, the petitioner also indicates that a supporting letter from [REDACTED] corroborates the petitioner's judging duties at a scientific conference held in 2006. The petitioner submits additional evidence listing American Electrophoresis Society (AES) as the primary sponsor of the conference. [REDACTED] supporting letter is part of the record and states:

In recognition of [REDACTED] extraordinary accomplishments and expertise, he was invited to organize a session titled "BioMEMS and Microfluidics: Proteome Analysis" at the 23<sup>rd</sup> Annual Meeting of the American Electrophoresis Society (AES) held in [REDACTED] [REDACTED] ably shouldered the responsibilities of a session organizer, which include soliciting abstracts from researchers across the nation and judging the work for originality, accuracy, and relevance. [REDACTED] put together a very impressive session which was widely attended and included talks by leading researchers....

[REDACTED] indicates the petitioner was the session organizer at the 2006 conference; however evidence submitted by the petitioner in support of his role at the conference only indicates the petitioner served as the co-chair. [REDACTED] fails to establish how he is aware of the petitioner's role at the 2006 conference or that [REDACTED] is authorized to represent AES by identifying the petitioner's role at the AES conference. Without such evidence, the AAO can only consider [REDACTED] claims about the 2006

conference to be assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Additionally, the petitioner did not submit evidence to establish his role as co-chair at the 2006 conference. As a result, the lack of supporting evidence to corroborate [REDACTED] assertion that the petitioner's service as the co-chair at the 2006 conference included duties that can be construed to include serving as the a judge of the work of others, this evidence will not be considered to qualify under this criterion.

Notwithstanding the AAO's concerns regarding the 2006 conference, the petitioner's peer review of articles for several scientific journals and his position as Session Chair at the 2009 AES scientific conference establishes he meets the plain language requirements of this criterion set forth at 8 C.F.R. § 204.5(h)(3)(iv).

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

The director determined the petitioner did not meet the requirements of this criterion. In support of this criterion the petitioner submits two patent applications with no evidence that the U.S. Patent and Trade Office approved either patent application. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The director's decision noted that the petitioner licensed one patent to a corporation, that the license has since expired, and that no commercial sales have resulted from this licensing agreement. The petitioner failed to rebut the director's finding relating to this patent licensing agreement. Thus, the impact of the device is not documented in the record. The petitioner submits no evidence that the licensed patent is having an impact on nor is it producing an effect on his field.

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

The record contains seven articles published in scientific journals. The petitioner is the primary author of three of these articles and the secondary author of the remaining four articles. The record

also contains a chapter in a scientific handbook, of which the petitioner serves as the primary author. The record reflects that two of the petitioner's articles have received a moderate amount of citations. While a moderate amount of citations demonstrates awareness of the petitioner's work and its value, not every researcher who performs moderately valuable research has inherently made a contribution of major significance to the field as a whole. It remains the petitioner's burden to document the actual impact of his articles. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.<sup>5</sup> While the AAO takes into consideration the citations and ranking of the journals in which the petitioner's articles appear, such as *Analytical Chemistry* and *Electrophoresis*, it is not persuasive that the moderate citations of the petitioner's articles are reflective of the major significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as required by this regulatory criterion.

The remaining evidence relevant to this criterion consists of nine letters. All of these letters appear to be solicited in support of the petitioner's immigrant visa petition and seven of the letters are from current or former collaborators of the petitioner and cannot be considered wholly independent.

In reference to the letters from the petitioner's collaborators and immediate circle of colleagues, most identify his work related to liver cancer detection and possible future achievements that may result from his work. In addition these letters discuss the petitioner's published articles and the fact that others cite his work.

notes the petitioner's accomplishments while at [REDACTED] evidenced by two papers published in scientific journals and the petitioner's research which led to two patent applications and eventually to a third published article in a scientific journal. The AAO addresses these published articles and patent applications separately within this decision. [REDACTED] also claims the petitioner made significant contributions to his department through the receipt of several federal grants. The record does not bear this assertion out with documents to corroborate this assertion. As previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Soffici*, 22 I&N Dec. at 165. Moreover, the vast majority of research is grant funded. The petitioner has not established that grant funding, based on the future potential of the funded research, is indicative of or consistent with a completed contribution of major significance.

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<sup>5</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.

██████████ served in various management positions at the time the petitioner's employment with ██████████ identifies some of the petitioner's accomplishments at the company, namely how the petitioner's research served as the basis of new techniques and for the introduction of new products. One such product ██████████ discusses is a liver cancer detection device which he alleges Japan has pursued and has recently launched. However, neither ██████████ nor the petitioner provides documentary evidence to corroborate this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Soffici*, 22 I&N Dec. at 165. In the alternative, if the AAO were to accept this assertion as fact, ██████████ only states the use of the device has been launched in one country. ██████████ statement does not indicate the petitioner's device is being used in a manner or a volume that can be considered to have an impact on the field as a whole. ██████████ identifies certificates awarded to the petitioner for novel inventions; however, the record contains no evidence of these certificates. The letter also claims that ██████████ is currently developing one of the petitioner's inventions into a commercial product which Caliper will market in the future. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See 8 C.F.R. §§ 103.2(b)(1), (12); Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). ██████████ also notes two articles the petitioner published in scientific journals while working at ██████████. The AAO addresses these published articles and patent applications separately within this decision.

██████████ France asserts that postdoctoral researchers are using complex codes the petitioner developed. However, ██████████ does not identify these postdoctoral researchers, if they are independent or are the petitioner's former or current collaborators, or how these researchers are using the codes. Additionally, the record lacks evidence that might also make apparent the effect of these codes on the petitioner's field.

These letters also make several assertions of the petitioner's achievements. The letters fail to provide accompanying evidence to corroborate the claims and lack specificity of how the petitioner's achievements have affected the field or that the asserted achievements are being used or reproduced within the petitioner's field. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *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).<sup>6</sup>

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<sup>6</sup> In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

The two letters that are not from former colleagues are from [REDACTED] in the [REDACTED] and from [REDACTED]. Both letters attest to the petitioner's influence on the field through the authorship of scholarly articles, and both claim to cite to the petitioner's work within their own scholarly articles.

[REDACTED] citation to the petitioner, identifies the petitioner's area of work (analyte stacking) as a potential area where [REDACTED] findings are relevant. [REDACTED] article shows no reliance on and lends no credence to the petitioner's findings which might theoretically support [REDACTED] own work. The fact that independent experts in the field cite to the petitioner's own work might generally show his work is valued in the field. However, in instances such as this, where the citations show little or no reliance on the petitioner's findings, the citations cannot be viewed to hold the same sway as citations that show influence.

The letter from [REDACTED] identifies how the petitioner's work with liver cancer detection "paves the way" to develop new detection instruments and how the petitioner is "focusing his efforts" on leveraging a device that will help overcome bottlenecks in the production of biofuels. These are speculative benefits of a futuristic nature, however the classification the petitioner seeks requires the achievements that have already come to fruition. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the self-petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. See 8 C.F.R. §§ 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

[REDACTED] also states that the petitioner, "has significantly impacted both fundamental and applied aspects of electrokinetic microfluidic systems." [REDACTED] does not, however, explain how this field is applying the petitioner's work. Rather, he refers generally to the citations of the petitioner's work. While [REDACTED] uses his own cite of the petitioner's work as an example, as stated above, the actual cite shows no reliance on the petitioner's work.

[REDACTED] cites to the petitioner's work within his own article. However the citation is contained within a single paragraph in which [REDACTED] includes the citation to the petitioner with 27 other citations to other scientific works. More specifically, [REDACTED] cites the petitioner's article as one of five articles for a single proposition. This citation appears to be background and it does not appear that [REDACTED] shows any substantial reliance on the petitioner's work within his own works. In his letter, [REDACTED] also attests to the liver cancer detection device the petitioner developed. However, neither [REDACTED] nor the evidence on record establish that research laboratories or medical facilities are using this device or that the device has imposed an influence on the field which would indicate this device constitutes a contribution of major significance. While the two independent researchers' reliance on the petitioner's work show the petitioner's work is not without value, this fact alone does not establish the petitioner has made contributions of major significance in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000)

(citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.<sup>7</sup> The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The regulation requires original contributions of major significance in the field. While the petitioner has established he has made original contributions to his field of endeavor, his achievements and accomplishments, as of the priority date, fail to rise to the level of being considered of “major” significance. As a result, the petitioner has not submitted qualifying evidence that meets the plain language requirements of 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 submits evidence of serving as the author of seven published scholarly articles in addition to one chapter in a scientific handbook related to his field. This evidence meets the plain language requirements of 8 C.F.R. § 204.5(h)(3)(vi).

### *Summary*

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

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<sup>7</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

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

In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20. While the *Kazarian* court did not perform a final merits determination because the alien in that case was unable to meet the antecedent procedural step of submitting the requisite evidence under three criteria, the court did provide very specific examples of concerns that are appropriate for a final merits determination.

As noted above, the record contains no evidence to establish that GRC issues travel grants based on excellence in the field of endeavor to meet the requirements of 8 C.F.R. § 204.5(h)(3)(i). GRC issued this travel grant to help finance the petitioner’s registration fee in order for him to attend the conference and based their reasoning on one of the petitioner’s unidentified poster abstracts. Such an award or grant is not indicative of or consistent with sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

As noted above, the record contains no evidence to establish membership in [REDACTED] requires outstanding achievements of their members. Additionally, the record contains no evidence that admittance to [REDACTED] is judged by recognized national or international experts in the petitioner’s field to meet the requirements of 8 C.F.R. § 204.5(h)(3)(ii).<sup>8</sup> The record lacks any other evidence to suggest that [REDACTED] membership is indicative of or consistent with sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

As noted above, the record contains no evidence to establish the existence of published material about the alien and relating to his work as anticipated and required by 8 C.F.R. § 204.5(h)(3)(iii). The submitted articles make brief reference to the petitioner or cite to his work, but the articles are about the petitioner’s field of endeavor. Such published material is not indicative of or consistent with sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

The record above reflects that the petitioner has performed peer-review for articles for five journals on a total of seven occasions. 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. Scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys

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<sup>8</sup> An organization that boasts nearly 60,000 members does not represent only that very small percentage at the top of the field. See <http://www.sigmaxi.org/member/overview/index.shtml> accessed on September 20, 2011.

international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the petitioner cannot establish that his judging experience is indicative of or consistent with sustained national or international recognition. While this evidence is representative of one who is rising within the petitioner's field, it is not indicative of one who has sustained acclaim and has attained a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field. The petitioner has not documented that he is a credited member of editorial boards for distinguished journals, which is typically more consistent with an exclusive group who has risen to the top of their field. For example, several of the individuals who submit supporting expert letters on the petitioner's behalf have either served as journal editors, or served on editorial boards.

Additionally, the petitioner submits evidence establishing that on one occasion he served as a Session Chair for an AES scientific conference. According to [REDACTED], serving in this position is consistent with being viewed as being outstanding in research field. Nevertheless, a single instance of serving as a Session Chair is not indicative of or consistent with sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor. The record contains evidence the petitioner also served as a Session Co-chair at a 2006 AES conference; however the petitioner submits no evidence to establish his role or duties at this conference.

As stated above, the petitioner is a named inventor on two patent applications. Patent applications and grants do not by themselves serve as the measure of an individual's ability to qualify for this classification. A patent grant merely provides the patentee "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process." *See* 35 U.S.C. § 154. Rather, the level of the impact on the field as a whole through the wide use of the innovation is a more appropriate measurement to determine if an alien has sufficiently influenced his field. *See New York State Dep't. of Transp.*, 22 I&N Dec. at 221 n. 7. Although the petitioner licensed one of his patent applications to a corporation for a period of one year, the record does not indicate that any sales resulted from the licensing agreement and this agreement has since expired. Therefore, the AAO cannot conclude that the patent applications have produced any measureable impact on his field. In a quantifiable comparison, several of the individuals who submit supporting expert letters on the petitioner's behalf have a dozen or more patent applications filed with the U.S. Patent and Trademark Office.

As previously discussed, the petitioner provides nine letters from individuals in the scientific field. While the letters describe the petitioner's achievements that are established in the record, the letters fall short of identifying tangible effects these achievements have had on the petitioner's field. One example is the liver cancer detection device the petitioner has developed. Several experts claim this

will pave the way in developing new detection instruments or that this is an outstanding example of the petitioner's potential, but none specify how the petitioner's field has been impacted by this detection capability. The supporting letters from [REDACTED] indicate the petitioner's liver cancer diagnostic device was commercially launched in Japan. The petitioner submits no evidence of contracts or commercial sales that might serve to corroborate this assertion. Additionally, no evidence is presented to show how this device is impacting the petitioner's field. Without a substantial, measurable impact on the field, this device cannot considerably contribute to the petitioner attaining the status as one of that small percentage who has risen to the very top of the field.

The petitioner is the author or coauthor of seven articles published in scientific journals, two of which garnered a moderate amount of citations as of the priority date. Amassing a moderate amount of citations for two articles, and a minimal amount of citations dispersed among his remaining five articles does not support the finding that the petitioner is among the small percent who have risen to the top of the field. The petitioner's field has not responded to his work in a manner consistent with sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

The petitioner is also the first author of a chapter in a scientific handbook in 2007. Four of the individuals who submit supporting letters have authored one or more books and a total of 37 stand alone chapters. When comparing the petitioner's single chapter in a handbook to the accomplishments of those from whom he requested references from, the petitioner does not measure up to their experience and stature within the field to be considered among the small percent who have risen to the top of the field.

In his support letter for the petitioner, [REDACTED] also states, "Overall, in my judgement, [the petitioner] is a brilliant scientist and I would place him at the top 1-percentile among his fellow young scientists in the field." This statement appears to compare the petitioner to other up-and-coming research scientists in the field who may show the possibility of having future potential to be a leader in the field. When compared to the field as a whole, however, this statement does not support the position that the petitioner is one of that small percentage who have risen to the very top of the field of endeavor.

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 research scientist, relies on a travel grant as an award, membership in a single organization, participation in the widespread peer review process, service as a Session Chair, his patent applications, support letters primarily from his current and former collaborators, and a moderate publishing record. While this may distinguish him from other postdoctoral researchers and research associates, the AAO will not narrow his field to others with his level of training and experience. Significantly, the petitioner's references list their own accomplishments in their curriculum vitae. [REDACTED] has published more than 300 original research articles, received five national or international awards, held a position on nine award committees, served as editor of two journals, held a position on eight journal editorial boards, authored

one book, and served in the position of Session Chair for 13 scientific conferences. [REDACTED] has published 80 articles, received 12 national or international awards, served as reviewer for 35 scientific journals, authored three books, served in the position of Session Chair for three scientific conferences, and submitted 31 patents with 16 patents awarded. Although the petitioner shows potential to be a future leader of his field, it appears that the highest level of his field is well above the level he has attained.

### **III. Conclusion**

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

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

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

**ORDER:** The appeal is dismissed.