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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**

B2

[REDACTED]

DATE: **APR 19 2012**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director, Texas Service Center, denied the employment-based immigrant visa petition on October 20, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on November 5, 2010. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically, in the field of infectious diseases and microbiology, 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 has 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; 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)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submitted a brief, asserting that the director had improperly applied the holding of *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Counsel submitted no additional evidence. For the reasons discussed below, the AAO finds that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner meets only two of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3), and that, in the final merits determination, the petitioner has not demonstrated that she is one of the small percentage who are at the very top of the field and she has not sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

## I. LAW

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

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

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

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

- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 this case, the AAO will focus its analysis on the final merits determination, as the director found that the petitioner meets three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3).

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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 (vi).

### III. 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.* 8 C.F.R. § 204.5(h)(3)(i).

When counsel initially filed the visa petition on January 19, 2010, she claimed that the petitioner meets the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i). In response to the director's Request for Evidence, however, counsel did not further pursue this issue. On appeal, counsel has not asserted that the petitioner meets this criterion. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

*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.* 8 C.F.R. § 204.5(h)(3)(ii).

When counsel initially filed the visa petition, she claimed that the petitioner meets the membership in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii). In her response to the director's Request for Evidence, counsel again asserted that the petitioner meets this criterion. The director concluded otherwise on October 20, 2010, finding that the petitioner has provided insufficient evidence showing that she is a member of any association that requires outstanding achievements of its members. On appeal, counsel has not challenged the director's decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

*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.* 8 C.F.R. § 204.5(h)(3)(iv).

When counsel initially filed the visa petition, she did not claim that the petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv). In her response to the director's Request for Evidence, counsel asserted for the first time that the petitioner meets this criterion, noting that the petitioner "has been asked to judge the work of numerous others including senior physicians who do not have his [sic] expertise. [The petitioner] . . . has judged the work of physicians and researchers on numerous occasions . . . ." The director agreed that the petitioner meets this criterion. As such, the AAO will not further discuss this issue.

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<sup>2</sup> Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

When counsel initially filed the visa petition, she asserted that the petitioner meets the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). In her response to the director's Request for Evidence, counsel further advanced this position. The director agreed, finding that the petitioner has met this criterion. Upon a review of the evidence in the record, the AAO disagrees with the director and concludes that the petitioner has not met this criterion. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In her initial visa petition filing, counsel asserted that the petitioner meets this criterion because:

While working in infectious diseases during a fellowship at the Mayo Clinic, [the petitioner] created a specific template for her dictation on patients infected with the HIV virus to make the information readily accessible – a very important matter as these cases are one [sic] of the most complex to monitor efficiently and effectively with their countless variables.

In her January 25, 2008 letter, [redacted] an assistant professor of medicine in the Medical University of South Carolina's Division of Infectious Diseases, stated that [redacted] of the Mayo Clinic[s] HIV Clinic and recently appointed chair of the National Board of Directors of the American Academy of HIV medicine, was so impressed by the comprehensive, all-inclusive nature and effectiveness of the template that he proposed it be made the national standard for use in treating HIV patients." [redacted] of the Medicine Department in the Clinical Science Institute of the University Hospital in Galway, Ireland, made the verbatim claim about Dr. [redacted] proposal in his June 27, 2008 letter.

In her initial brief, counsel also asserted that the petitioner's research led to the U.S. Food and Drug Administration (FDA) approval of a new antibiotic, cethromycin, used to combat a previously antibiotic-resistant strain of pneumonia. To support this assertion, counsel filed a number of reference letters that mentioned the petitioner's involvement with cethromycin.

In addition, in her response to the director's Request to Evidence, counsel contended that additional reference letters show that a number of "physicians have [] incorporated [the petitioner's] original findings into their own clinical practice [which] is indicative that clinicians throughout the United States have changed the way they treat their patients based on [the petitioner's] research."

The AAO, however, is not persuaded that the evidence shows that the petitioner has made either original contributions or contributions of major significance in the field of infectious diseases and microbiology. First, counsel has provided no curriculum vitae or detailed description for any of the

references' educational or employment background. Other than a job title, the AAO is left with little evidence upon which it may determine if a reference is qualified to give his or her opinion on the petitioner's research or its impact in the field of infectious diseases and microbiology. Moreover, the AAO does not have sufficient information to discern if the references' opinions are objective or independent, because the AAO lacks information on the association or connection between the petitioner and the references, or how the references come to be familiar with the petitioner or her research.

There are also inconsistencies between information contained in the reference letters and evidence in the record. For example, in his January 18, 2008 reference letter, [REDACTED] Clinical Division of Mayo Clinic's Department of Dermatology and [REDACTED] stated that the petitioner's research "has been published and presented in a multitude of medical journals and conferences." The evidence, however, shows that the petitioner published a four-page "Concise Communication" in the *Journal of Infectious Diseases* in 2002, a six-paragraph abstract of an oral presentation in the *Journal of General Internal Medicine* in 1999, and three poster presentations from 1993 to 1999. The evidence does not show "a multitude of medical journals and conferences," as asserted by [REDACTED]. Furthermore, notwithstanding [REDACTED] allusion to the exclusivity of the conferences where the petitioner had poster presentations, the evidence shows that the petitioner's 1999 poster presentations were two of at least 393 poster presentations; her 1998 poster presentation was one of 494 poster presentations; and her 1993 poster presentation was one of an unknown number of poster presentations. The evidence is inconsistent with [REDACTED] claim of exclusivity. As the petitioner has provided inconsistent documents, "it is incumbent upon [her] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence. In short, the AAO finds the abovementioned inconsistencies undermine the overall credibility and reliability of [REDACTED] opinion on the petitioner and her research.

Second, assuming *arguendo* that the references were qualified to make an assessment of the petitioner's research studies, the evidence does not show that any of her research studies constitute original contributions. Specifically, there is limited information on what the petitioner did that led to the creation of the HIV patient treatment template, the FDA approval of the new drug or research findings or clinical practices that other clinicians found useful. In short, there is insufficient evidence to show that what the petitioner did was original, such that she was the first person or one of the first people to have done the particular research or to have made the particular findings.

Third, again assuming *arguendo* that the references were qualified to make an assessment of the petitioner's research studies, the evidence does not show that any of her research studies constitute contributions of major significance in the field of infectious diseases or microbiology. Specifically, notwithstanding [REDACTED] proposal, there is no evidence showing that the proposal has been adopted or that there is a consensus among infectious disease specialists or microbiologists that the petitioner's template should be adopted. One person's opinion, even if that person is the Head of the

Mayo Clinic's HIV Clinic, is not sufficient to demonstrate that the petitioner's template constitutes contributions of major significance in the field. Similarly, the mere fact that the petitioner was involved in the FDA approval process for a drug also does not establish that her involvement constitutes contributions of major significance. The record is devoid of information on the frequency doctors prescribe the drug or the effectiveness of the drug. Likewise, a handful of doctors adopting the petitioner's research findings in their practices do not demonstrate that the petitioner's research constitutes contributions of major significance to the entire field of infectious diseases or microbiology.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. Section 203(b)(1)(A)(i) of the Act. While the petitioner's concise communication in 2002 may have garnered moderate citation, this single example of independent recognition is insufficient evidence of contributions of major significance in the plural.

Accordingly, the AAO concludes that the petitioner has not submitted sufficient evidence showing that she has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

When counsel initially filed the visa petition, she claimed that the petitioner meets the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). Counsel made a similar assertion in her response to the director's Request for Evidence. On October 20, 2010, the director decided this issue favorably, finding that the petitioner has provided sufficient evidence showing that she meets this criterion. As such, the AAO will not further discuss this issue.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

When counsel initially filed the visa petition, she claimed that the petitioner meets the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). In her response to the director's Request for Evidence, counsel again asserted that the petitioner meets this criterion. The director concluded otherwise on October 20, 2010, finding that although the petitioner has provided sufficient evidence showing the Mayo Clinic to be an organization with a distinguished reputation, she has not provided sufficient evidence showing that her role as either a fellow or instructor constitutes a critical or leading role for the Mayo Clinic. On appeal, without providing any legal argument, counsel asserted that the petitioner has performed "leading roles at prominent medical institutions . . . ." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, counsel's mere statement on appeal that the petitioner meets this criterion, without providing any legal support, does not trigger the AAO to conduct a full

analysis of the criterion. *See Desravines v. United States Attorney General*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal by a *pro se* litigant are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). Accordingly, the AAO concludes that the petitioner has abandoned this issue, as she did not properly raise it on appeal.

#### B. Final Merits Determination

Based on the evidence in the record, the AAO concludes that the petitioner has not submitted the requisite evidence under three evidentiary categories. Although the petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), she meets no other criteria. Notwithstanding this finding, in accordance with the *Kazarian* opinion, the AAO will 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 [she] is one of [a] small percentage who have risen to the very top of the field of endeavor,” and (2) that she “has sustained national or international acclaim and that [ ] 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)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the AAO concludes that the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

In her brief, counsel, citing *Buletini v. I.N.S.*, 860 F. Supp. 1222 (E.D. Mich. 1994), contends that because the petitioner has met three of the ten evidentiary categories, the director erred in denying her visa petition. The AAO disagrees. First, as discussed above, the AAO finds that the petitioner meets only two of the evidentiary categories. Second, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 718-20 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, the court in *Buletini* acknowledged that legacy INS, now USCIS, may deny a visa petition when it “sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.” *Buletini*, 860 F. Supp. at 1234. The AAO will discuss such reasons in the following final merits determination.

With regard to the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i), as discussed above, the AAO concludes that the petitioner has abandoned this issue, because she failed to timely raise it on appeal. *See Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. Moreover, the AAO finds that the petitioner’s evidence in support of this criterion does not demonstrate that she is one of a small percentage who have risen to the very top of the field of infectious diseases and microbiology, or that she has sustained national or international acclaim and that her achievements have been recognized in her field. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In her brief in support of the initial filing

of the visa petition, counsel stated that the petitioner had received several awards, but failed to specify the awards. The petitioner's evidence includes her self-serving curriculum vitae, indicating that in 1992, she was awarded [REDACTED] Dublin, and in 1993, she was awarded first place in ethnics by an unspecified organization. In his March 12, 2010 Request for Evidence, the director asked the petitioner to submit evidence to establish the origination, purpose, significance and scope of each award, as well as the criteria used to nominate and judge the award nominees and winners. In her response, the petitioner provided none of the requested documents and counsel provided no legal argument to support a finding that the petitioner either meets this criterion or that the awards constitute evidence that the petitioner is eligible for the employment classification sought. The petitioner also failed to provide any evidence documenting her receipt of the awards, i.e., a copy of the awards or a letter from the organization(s) that presented her the awards.

With regard to the memberships in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii), as discussed above, the AAO concludes that the petitioner has abandoned this issue, because she failed to timely challenge the director's adverse decision. *See Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. Moreover, the AAO finds that the petitioner's evidence in support of this criterion does not demonstrate that she is eligible for the employment classification sought. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In her brief in support of the initial filing of the visa petition, counsel stated that the petitioner "has been selected for membership in some of the country's most important medical organizations." The petitioner's supporting evidence includes (1) her self-serving curriculum vitae, which shows that she is a member of the American Board of Internal Medicine (ABIM), American College of Physicians (ACP), American Society of Microbiology (ASM), Infectious Diseases Society of America (IDSA), American Medical Association (AMA) and Medical Council of Ireland (MCI); (2) descriptions of the various organizations that she had joined; and (3) receipts proving her payments of 2009 membership dues for ASM, IDSA, AMA and ACP.

In response to the director's Request for Evidence, counsel acknowledged that it is very "rare" for physician organizations to require "outstanding achievement[s]" from their members. This statement is supported by the organizational descriptions provided in the petitioner's curriculum vitae. Specifically, according to this self-serving document, the ABIM certifies one out of every three practicing physicians in the United States. The ACP has 126,000 members. The ASM has 43,000 members. The AMA accepts anyone who has passed the United States Medical Licensing Examinations, holds an active license to practice medicine in the United States, and has passed a background check. The MCI has 19,071 registered doctors. These documents suggest that the associations of which the petitioner is a member allow most, if not all, physicians in good standing to join, regardless of their achievements or accomplishments in their respective medical fields.

With regard to the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), the AAO agrees with the director's findings that although the petitioner meets the criterion, the evidence does not demonstrate that the petitioner enjoys national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. According to a number

of the petitioner's references, including [REDACTED] an associate professor of medicine in the Mayo Clinic's Division of Hematology, and [REDACTED] an infectious diseases physician in Duluth, Minnesota, when the petitioner was a fellow with the Mayo Clinic from 1999 or 2000 to 2003, she served as an instructor and was involved in teaching, supervising and evaluating residents and medical students. [REDACTED] stated in his January 18, 2008 reference letter that the petitioner "played a part [in] shaping the curriculum for teaching medical students . . . ."

Although the evidence demonstrates that the petitioner has met this criterion, the evidence is not indicative of the petitioner's sustained national or international acclaim. On this issue, the AAO agrees with the director in that when the petitioner was an instructor in the Mayo Clinic, one of her inherent duties in that position was to teach and evaluate her students. Most, if not all, teachers of all types teach and evaluate their students. Indeed, a number of the petitioner's references who teach, also evaluate either their students or other physicians. For example, in his June 27, 2008 letter, Professor [REDACTED] stated that he has "judged, evaluated and reviewed many outstanding Infectious Diseases specialists." In his June 17, 2008 letter, [REDACTED] a senior lecturer in medicine in the Clinical Science Institute of the University College Hospital in Galway, Ireland, stated that it is his responsibility to "evaluate a physician's clinical and research acumen." Similarly, in his January 24, 2008 letter, [REDACTED] a consultant to the Mayo Clinic's Division of Nephrology and Hypertension, an associate professor of medicine and Program Director of Mayo Clinic's Transplant Nephrology Fellowship, indicated that he "evaluate[s] a physician's clinical and research acumen." Based on the evidence in the record, including those not specifically mentioned, the AAO cannot conclude that the petitioner's teaching positions and obligations with the Mayo Clinic, which ended in 2003 and were internal to her place of employment, support a finding that she enjoys national or international acclaim.

Moreover, although the petitioner's curriculum vitae indicates that from 2008 to 2009, she served as the Medical Director and Chairperson of Infection Control for the Valley Hospital in Las Vegas, Nevada, a teaching hospital, the AAO does not have sufficient evidence to conclude that she participated as a judge of the work of others in the medical field or that the positions are indicative of sustained national or international acclaim. The January 18, 2010 letter from [REDACTED] the [REDACTED] indicates that the petitioner began serving as [REDACTED] not in 2008, as claimed in the petitioner's curriculum vitae. The letter, however, does not provide the AAO with sufficient evidence to find that in these posts, the petitioner either has participated as a judge or enjoys sustained national or international acclaim. The AAO makes the same findings as relating to the petitioner's 2010 position as an executive member of the Medicine Department Committee of the Valley Hospital Medical Center.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the AAO concludes that the petitioner has not met this criterion, because she has not shown that her research studies constitutes either original contributions or contributions of major significance in the field of infectious diseases and microbiology. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

Specifically, the petitioner's evidence shows that she has been involved in a number of research studies. For example, [REDACTED] an infectious disease specialist at the Valley Hospital in Las Vegas, Nevada, stated in his March 29, 2010 reference letter that the petitioner's research relating to transplant-related infections was "novel and original," was "very important in shedding new lights on an important clinical issue," and "directly led to improvement in patient care." He then speculated, without providing sufficient bases, that the petitioner was "one of less than 5% of current physician scientists who could have even taken this project to fruition, simply because of its sheer complexity."

[REDACTED] and an instructor in microbiology, stated in her letter that the petitioner's research resulted in the reduction of patient morbidity, mortality, length of hospital stay and healthcare cost. The petitioner's other reference letters, including those from [REDACTED] and [REDACTED] show that her research on infections had led to the FDA approval of an antibiotic to combat a previously antibiotic-resistant strain of pneumonia.

The petitioner's evidence also shows that a number of her references have relied on the findings of her research in their medical practice. For example, [REDACTED] who was the petitioner's [REDACTED] in the Mayo Clinic's Department of Medicine, stated in his March 28, 2010 reference letter that he had relied on the petitioner's research on cytomegalovirus to diagnose and treat his patients. [REDACTED], an internal medicine doctor at the Valley Hospital in Las Vegas, Nevada, wrote in his March 26, 2010 reference letter that he is "well-aware of [the petitioner's] landmark research and [has] utilized its applications frequently in [his] own practice." [REDACTED] an infectious disease specialist at the Veterans Affairs Hospital in North Las Vegas, Nevada, stated to have benefited from the petitioner's research that allowed him to make "timely, potentially life-saving, early diagnos[es]." The petitioner has not, however, demonstrated that these references are independent such that these letters demonstrate that the petitioner is known beyond her immediate circle of current and former colleagues.

Finally, the petitioner's evidence suggests that she may be respected among physicians, mostly among those with whom she has worked. Specifically, [REDACTED] claimed that the petitioner "is deeply respected and admired by her colleagues." [REDACTED] an infectious disease specialist at Infection Doctors in Las Vegas, Nevada, claim in her April 3, 2010 letter that the petitioner's research work has been "very impressive . . . ." [REDACTED] discussed in his reference letter two of the petitioner's researches, one on the proper dosing of fluconazole, and the other on a rheumatoid arthritis medication, and stated that other physicians have been impressed by the petitioner's research work.

Based on the evidence in the record, including documents not specifically mentioned above, the AAO concludes that the petitioner has been a productive and effective researcher and physician, her research results have assisted physicians, mostly local colleagues, in their medical practice and she is respected by other physicians. This, however, is insufficient to demonstrate that she is either one of a small percentage who have risen to the very top of the field of infectious diseases and microbiology, or that she has sustained national or international acclaim. The accomplishments that the petitioner has attained are similar to those of any researcher who has had achieve some level of success. But being such a researcher does not mean the person has reached the very top of her field or has attained

national or international acclaim. The AAO notes that the petitioner's reference letters are mostly from people associated with the Mayo Clinic or the National University of Ireland, where the petitioner completed her medical training, or physicians in the Las Vegas, Nevada area, where she has worked since approximately 2005. The evidence might be indicative of regional or local familiarity, but falls short of national or international acclaim. Although [REDACTED] Mikati Foundation Endowed Chair in Liver Diseases at the Cleveland Clinic in Cleveland Ohio, stated in his March 30, 2010 letter that the petitioner is "regarded as one of the top infectious disease specialists currently practicing throughout the world," the AAO deems this a conclusory statement, made without sufficient support or basis. *See 1756, Inc. v. Attorney General of United States*, 745 F. Supp. 9, (D.C. Dist. 1990) (USCIS need not accept primarily conclusory assertions). Indeed, Dr. Zein's March 30, 2010 letter is a one-paragraph letter.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the AAO agrees with the director's findings that although the petitioner meets this criterion, the evidence does not demonstrate that she is eligible for the employment classification sought. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Under the publication section of her curriculum vitae, the petitioner listed: (1) a 2002 four-page "Concise Communication," entitled "Selective Reactivation of Human Herpesvirus 6 Variant A Occurs in Critically Ill Immunocompetent Hosts," published in the *Journal of Infectious Diseases*, and (2) a 1999 six-paragraph abstract of an oral presentation, entitled "Thyrototoxic Graves' Disease with Profound Anemia, Thrombocytopenia and Lymphadenopathy," published in the *Journal of Internal Medicine*. The petitioner also claimed to have published three poster presentations from 1993 to 1999. According to counsel's brief filed in support of the initial visa petition filing, these publishers have "a less than 20% publication rate for applications." Similarly, in her March 26, 2010 reference letter, [REDACTED] stated that the publication acceptance rate is between 10 and 20 percent. The petitioner has provided a January 15, 2010 online printout showing that her 2002 "Concise Communication" has been cited eighty-three times. The AAO notes that although the petitioner completed her fellowship training at the Mayo Clinic, a prestigious entity, where she was involved in a research project that received some attention through citations, she has not since been involved in another project that has received a similar level of attention. Indeed, no evidence has been submitted to show that her 1999 abstract or any of her three poster presentations was ever cited.

In her April 5, 2010 reference letter, [REDACTED] an associate professor of medicine in Mayo Clinic's Division of Pulmonary and Critical Care Medicine, stated that the petitioner published an article, entitled "HHV-6 and HHV-7 Reactivation in Critically Ill Immunocompetent Patients," based on her "truly groundbreaking research." The letter does not specify the date or the publisher of the article. This article is also not listed in the petitioner's curriculum vitae. According to the petitioner's curriculum vitae, this was one of her study designs approved by the Mayo Clinic Institutional Review Board. There is no indication from the curriculum vitae when the study was conducted or if it resulted in a published article. As the petitioner has provided inconsistent documents, "it is incumbent upon [her] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N

Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Based on the petitioner's 2002 "Concise Communication," the 1999 conference abstract and three poster presentations, the AAO has insufficient evidence to find that she is one of a small percentage who have risen to the very top of the field of infectious diseases and microbiology, or that she has sustained national or international acclaim. The AAO has not been provided with information relating to the approximate number of articles a typical infectious disease and microbiology researcher or physician publishes, or the approximate number of other authors who would cite the researcher or physician's article(s). The AAO also does not have any information on either the publication or citation frequency of a top, let alone a very top, infectious disease and microbiology researcher or physician. In short, the AAO is unable to compare the petitioner's accomplishments with others in the same field and cannot conclude that the petitioner's published material and the eighty-three citations are indicative of or support a finding that she is one of a small percentage who have risen to the very top of her field or that she has *sustained* national or international acclaim.

With regard to the performance in a leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), as discussed above, the AAO finds that the petitioner has not met this criterion. Moreover, the evidence as relating to this criterion is not indicative of or consistent with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The evidence shows that the petitioner completed two fellowships and was employed as an instructor at the Mayo Clinic. The petitioner's affiliation with the Mayo Clinic ended when the fellowship and employment ended in 2003, approximately six years before she filed the visa petition in January 2010. Thus, this role is not evidence of *sustained* acclaim when the petitioner filed the petition. Regardless, the evidence does not support a finding that the petitioner has performed either a leading or critical role for the Mayo Clinic, because the record lacks evidence of her position within the Mayo Clinic's hierarchy or her contribution to the facility as a whole.

The evidence also shows that the petitioner was or is affiliated with a number of medical establishments in Nevada, including the Redrock Medical Group, North Vista Hospital, Horizon Specialty Hospital of Las Vegas, University Medical Center of South Nevada, the Salvation Army's Good Samaritan Medical Clinic, Sunrise Hospital and Medical Center and its affiliates, Valley Health System affiliates, St. Rose Dominican Hospitals, HealthSouth affiliates, and a number of medical establishments in Ireland. There is, however, insufficient evidence for the AAO to conclude that these organizations have a distinguished reputation. Moreover, the evidence does not indicate that the petitioner's role in these organizations or establishments was leading or critical or otherwise indicative of sustained national or international acclaim.

In addition to the evidence discussed above, the AAO reviewed all other evidence in the record, including (1) reference letters from doctors who praised the petitioner's care of patients and her dedication to providing medical care to the underserved population in Nevada; (2) documents relating to presentations that the petitioner had given in medical conferences hosted by the American Geriatrics Society, Royal College of Physicians of Ireland, and Interscience Conference on Antimicrobial Agents

and Chemotherapy (ICAAC); (3) a March 26, 2010 reference letter from [REDACTED] and (4) the petitioner's employment verifications. Although the AAO agrees that the petitioner has been a productive and effective researcher and physician, who is respected by her colleagues, she falls short of showing that she is one of a small percentage who have risen to the very top of the field of infectious diseases and microbiology or that she has sustained national or international acclaim in her field.

Finally, the AAO concludes that the petitioner has not continued to work in her area of expertise. Specifically, most of her evidence in support of the visa petition relates to her research accomplishments. She, however, has not conducted research studies since 2003 when her affiliation with the Mayo Clinic ended. Instead, the evidence shows that she has been working as a medical practitioner from 2003 to 2010, when she filed the visa petition. Indeed, in response to the director's Request for Evidence, the petitioner stated that "[she] fully intend[s] and look[s] forward to being able to continue [her] research in the further when [she is] able to work in an academic hospital that sponsors research . . . ." In short, her failure to be involved in research studies in the six years preceding the filing of her visa petition is inconsistent with her claim that she currently enjoys *sustained* national or international acclaim in the field of infectious diseases and microbiology as a researcher, when most of her evidence relates to her research studies.

#### IV. 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 her field of endeavor.

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

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.

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<sup>3</sup> Congresswoman Barkley noted in her letter that the petitioner works in an underserved area. Under section 203(b)(2)(B)(ii) of the Act, in certain cases, an alien may be granted an employment-based immigrant visa if she is a physician working in shortage areas or veterans facilities. This, however, is not the visa category that the petitioner seeks.