



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

DATE: DEC 19 2012

Office: NEBRASKA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (vi), and (viii). For the reasons discussed below, the AAO will uphold the director's decision.

## I. LAW

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

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

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

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

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

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

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

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 matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

## II. ANALYSIS

### A. Evidentiary Criteria

This petition, filed on March 28, 2011, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. In a statement submitted with the petition, the petitioner asserts: “I believe that I qualify for the classification as an alien of extraordinary ability due to my extensive expertise in biochemistry, in particular, molecular biology and

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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).

vascular biology.” At the time of filing the petition, the petitioner was working as a postdoctoral research associate in the Department of Pharmacology at the University of Illinois at Chicago (UIC). The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

The petitioner initially submitted the following:

1. A certificate stating: “THE AMERICAN SOCIETY FOR BIOCHEMISTRY AND MOLECULAR BIOLOGY [ASBMB] hereby awards this certificate to [the petitioner] in recognition of your participation in the ASBMB *Graduate/Postdoctoral* Travel Award Program in Anaheim, CA April 23-24, 2010. Your participation has helped to improve the communication of biochemistry and molecular biology among *young scientists* from around the world and your involvement is gratefully acknowledged by your colleagues in the scientific community.” [Emphasis added.];
2. A certificate stating: “THE AMERICAN SOCIETY FOR BIOCHEMISTRY AND MOLECULAR BIOLOGY hereby awards this certificate to [the petitioner] in recognition of your participation in the ASBMB *Graduate/Postdoctoral* Travel Award Program in San Diego, CA April 4-5, 2008. Your participation has helped to improve the communication of biochemistry and molecular biology among *young scientists* from around the world and your involvement is gratefully acknowledged by your colleagues in the scientific community.” [Emphasis added.];
3. A “Certificate for Travel Fellowship” stating: “This is to certify that Dr/Mr/Ms [the petitioner] was recipient of the CCLRU [Cornea and the Contact Lens Research Unit] TRAVEL GRANT for attending the 14<sup>th</sup> Annual Meeting of the Indian Eye Research Group.” (July 30 and 31, 2005); and
4. A fill-in-the-blank certificate on which the petitioner’s name and the date of August 22, 2004 were hand-written stating that the petitioner was “Awarded the AMJAD RAHI BEST SCIENTIFIC PAPER AWARD” at the “13<sup>th</sup> Annual meeting Of Indian Eye Research Group.”

With regard to items 1 – 3, the AAO notes that competition for the petitioner’s travel awards was limited to graduate students and postdoctoral researchers. Experienced research scientists who have long since completed their graduate studies and postdoctoral training do not seek or compete for such travel awards. Further, regarding items 1 – 4, despite the director’s request for evidence, the petitioner failed to submit any supporting documentary evidence showing that his awards are nationally or internationally recognized awards for excellence in the field of endeavor. The petitioner did not submit evidence of the national or international *recognition* of his particular awards, such as national or widespread local coverage of his awards in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically

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<sup>2</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that items 1 – 4 are recognized beyond the context of the scientific meetings where they were presented and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In response to the director's request for evidence, the petitioner submitted a July 11, 2011 letter addressed to him from the Research Administration, Midwest Affiliate (MWA) Research Programs, American Heart Association, stating:

We are pleased to inform you that the Research Committee of the American Heart Association (AHA) has approved activation of a MWA Spring 2011 Postdoctoral Fellowship for the period and in the amount indicated below. This award is contingent upon satisfactory demonstration that alternative funds have not been, nor will be, awarded to this project. AHA policies do not permit mutual funding or supplementation of a project, even when other agencies have reduced budgets.

Title of Project: Calcium Signaling, p38 Mitogen Activated Protein Kinase, and Regulation of Lung Microvascular Permeability

The award begins 7/1/2011, and has been approved at the level of funding indicated below:

Period 1 Start Date: 7/1/2011, End Date: 6/30/2012, Total: \$50048

Period 2 Start Date: 7/1/2012, End Date: 6/30/2013, Total: \$51992

The award has been approved for this duration; however, each year of funding is contingent upon adequate progress, and is subject to approval by the Affiliate Board of Directors and availability of funds.

The petitioner received the preceding American Heart Association MWA postdoctoral fellowship subsequent to the petition's March 28, 2011 filing date. Eligibility must be established at the time of filing. Therefore, the AAO will not consider this fellowship funding starting in July 2011 as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, according to the documentation submitted by the petitioner, his American Heart Association MWA Postdoctoral Fellowship reflects regional recognition in the Midwestern United States rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. Further, with regard to the MWA postdoctoral fellowship for which the petitioner applied and received research project funding, the AAO notes that research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding

from somewhere. For instance, the petitioner submitted an American Heart Association list of "Postdoctoral Fellowship Awardees" reflecting that five hundred researchers received similar funding. Obviously the past achievements of the fellowship recipient are a factor in research grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, the petitioner's American Heart Association MWA Postdoctoral Fellowship grant is principally designed to fund future research, and not to honor or recognize his past excellence in the field of endeavor.

In light of the above, the petitioner has not established that he meets this regulatory 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.*

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

The petitioner initially submitted copies of research articles that cite to his work. Articles which cite the petitioner's work are primarily about the authors' own work or recent trends in the field, and are not about the petitioner or even his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." *See also, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1,\*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). It cannot be credibly asserted that the submitted research articles are "about" the petitioner. The submitted articles do not discuss the petitioner's standing in the field or any other information so as to be considered published material about him as required by this regulatory criterion. Moreover, the AAO notes that the submitted articles similarly referenced numerous other authors. The material citing to the petitioner's work is more relevant to the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In response to the director's request for evidence, the petitioner submitted an August 2010 report in *Life Extension Magazine* entitled "Combating the 'Diabesity' Epidemic" that does not mention the petitioner and is not about him. Instead, the "References" section of the report lists a research article by the petitioner and four of his coauthors as number 26 of 105 references.

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

The petitioner also submitted a March 2009 “Editorial Focus” article in *American Journal of Physiology - Cell Physiology* entitled “Dissecting the functions of protein-protein interactions: caveolin as a promiscuous partner.” In that same March 2009 issue, *American Journal of Physiology - Cell Physiology* published an article coauthored by the petitioner and five others entitled “Caveolin-1 scaffold domain interacts with TRPC1 and IP<sub>3</sub>R3 to regulate Ca<sup>2+</sup> store release-induced Ca<sup>2+</sup> entry in endothelial cells.” The petitioner’s article is discussed in three paragraphs of the two-page Editorial Focus article. The Editorial Focus article also cites to seventeen additional articles authored by other researchers. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien” relating to his work rather than simply about the petitioner’s work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. It cannot be credibly asserted that the Editorial Focus article is “about” the petitioner. Further, the Editorial Focus article is more akin to a promotion of the petitioner’s article by the publisher rather than independent journalistic coverage about the petitioner.

The petitioner submitted a September 4, 2006 news release from *NewsRx*, but the author of the material was not identified as required by the plain language the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the information submitted by the petitioner does not explain how *NewsRx* selects its topics for coverage. The *NewsRx* article appears to be a press release rather than independent journalistic coverage. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring evidence of published material about the alien’s work). The news release posted at *NewsRx.com* is not “about” the petitioner. Instead, the news release is a summary of multiple authors’ recent research articles.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

*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 AAO withdraws the director’s finding that the petitioner’s evidence meets this regulatory criterion. The petitioner did not initially claim eligibility for this regulatory criterion. In response to the director’s request for evidence, the petitioner submitted a letter from [REDACTED] Program Coordinator, Chicago Biomedical Consortium, UIC, stating: “I certify that [the petitioner] served as a Judge at the University of Illinois at Chicago (UIC) Student Research Forum on April 19, 2011.” The petitioner also submitted two August 20, 2011 e-mails from [REDACTED], Guest-Editor, *Experimental Diabetes Research*, requesting that the petitioner review manuscripts entitled “The Role of Glucosamine-Induced ER Stress in Diabetic Atherogenesis” and “Modulation of apoptosis pathways by oxidative stress and autophagy in B cells” for the journal. The petitioner’s response also included an October 28, 2011 letter from [REDACTED] and a November 1, 2011 letter from the Editorial Office of Hindawi Publishing Corporation confirming that the petitioner completed the preceding manuscript reviews. The petitioner’s participation as a judge at the UIC Student Research Forum on April 19, 2011 and the August 20, 2011 e-mail requests that he review two manuscripts for *Experimental Diabetes*

*Research* post-date the March 28, 2011 filing of the petition. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding evidence in this proceeding.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing his work. [REDACTED] Tiruppathi, Associate Professor, Department of Pharmacology, UIC, states:

[The petitioner] has published the results of his work in a major peer reviewed professional journal, *American Journal of Physiology-Cell Physiology*. His published findings were acknowledged by an Editorial review in the same issue of *American Journal of Physiology-Cell Physiology*. . . . His findings were also presented at the "23<sup>rd</sup> Annual Experimental Biology Conference - American Society for Biochemistry and Molecular Biology" in San Diego, CA, 2008.

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After an important discovery made by [the petitioner] in the field of store-operated calcium channels in vascular pathogenesis, his interest also extended to studying the role of TRPC channel mediated calcium entry in activating cell survival factors through transcription factor induced mechanisms. In the course of this research, [the petitioner] has discovered that calcium entry via TRPC channels plays a critical role in the mechanism of cell survival signaling through an antiapoptotic protein A20 (TNFAIP3) expression in lung vascular endothelial cells. . . . This discovery was presented at the "23<sup>rd</sup> Annual Experimental Biology Conference-American Society for Biochemistry and Molecular Biology" in San Diego, CA, and was also published in a major international scientific journal, *American Journal of Physiology-Cell Physiology*.

The petitioner's initial evidence also included letters of support from [REDACTED] and [REDACTED] both Professors of Pharmacology at UIC, repeating the assertions of [REDACTED]. [REDACTED] Significantly, the preceding three references' letters either contain identical language

or virtually the same language when describing the petitioner's research activities and accomplishments, suggesting the language in at least two of the three letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Nevertheless, with regard to [REDACTED] and [REDACTED] comments regarding petitioner's published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications 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. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

In response to the director's request for evidence, the petitioner submitted citation indices reflecting an aggregate of 81 cites to seven of his published articles. Sixteen of the listed citations are self-cites by the petitioner or his coauthors. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The AAO notes that the number of independent citations per article is minimal to moderate. For instance, the submitted indices reflect that none of the petitioner's articles was independently cited to more than twenty times. Specifically:

1. "Caveolin-1 scaffold domain interacts with TRPC1 and IP3R3 to regulate Ca<sup>2+</sup> store release-induced Ca<sup>2+</sup> entry in endothelial cells" (*American Journal of Physiology-Cell Physiology*) was independently cited to thirteen times (plus two self-citations by the petitioner's coauthors);
2. "Effect of curcumin on proliferation of human retinal endothelial cells under in vitro conditions" (*Investigative Ophthalmology and Visual Science*) was independently cited to twelve times (plus two self-citations by the petitioner's coauthors);
3. "Calcium-mediated Stress Kinase Activation by DMP1 Promotes Osteoblast Differentiation" (*Journal of Biological Chemistry*) was independently cited to once (plus one self-citation by the petitioner's coauthors);

4. "The lymphocyte as a cellular model to study insights into the pathophysiology of diabetes and its complications" (*Annals of the New York Academy of Sciences*) was independently cited to five times (plus four self-citations by the petitioner's coauthors);
5. "Biochemical and molecular mechanisms of diabetic retinopathy" (*Current Science*) was independently cited to nineteen times (plus four self-citations by the petitioner and his coauthors);
6. "Ca<sup>2+</sup> influx via TRPC channels induces NF-kappaB-dependent A20 expression to prevent thrombin-induced apoptosis in endothelial cells" (*American Journal of Physiology-Cell Physiology*) was independently cited to twice; and
7. "A novel advanced glycation index and its association with diabetes and microangiopathy" (*Metabolism*) was independently cited to thirteen times (plus three self-citations by the petitioner's coauthors).

Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published articles is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work. It is not, however, an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the minimal to moderate number of independent citations per article for his published work is indicative of original contributions of major significance in the field.

In an October 26, 2011 letter submitted in response to the director's request for evidence, [REDACTED] states:

In the course of [the petitioner's] work, he developed and established an *in vitro* retinal vascular model to study the signaling cascade involved in retinal angiogenesis. His innovative and uniquely successful approach to isolate and propagate the vascular endothelial cells from retina, procured from human cadaveric eyes is an appropriate model to study the pathogenesis associated with retinal diseases. Using this exceptional *in vitro* human cell model, he was the first in the world to demonstrate that the uncontrolled proliferation of retinal endothelial cell upon the exposure of high glucose level, a condition mimicking diabetes may be regulated using a supplement derived from a spice commonly used in the diet, Curcumin. Curcumin is an active ingredient from a rhizome, *Curcuma Longa*. . . . The outcomes obtained from his studies can be directly applicable to save human vision affected by various retinal diseases in its early stages. His original findings were published in an internationally acclaimed, highly cited journal in the field of Ophthalmology, *Investigative Ophthalmology and Vision* [sic] *Science*, 2006.

[The petitioner] embarked on a project which was geared towards unraveling the mechanisms that lead to disruption and subsequent repair of the endothelial barrier. Using genetically modified mice model and other state-of-the-art technologies, his studies identified, for the first time, that a scaffolding region of a protein (caveolin-1) is accountable for the organization of calcium handling in vascular endothelial cells. Since calcium levels inside the cells is crucial for the cell survival and vascular barrier functions, his findings delineating an important mechanism by which the cells can regulate the calcium levels inside the cytosol is imperative and of high significance. His discoveries were published in . . . *American Journal of Physiology- Cell Physiology* . . . .

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[The petitioner] also instigated his research towards addressing the molecular players involved in activating and regulating the calcium permeable transient receptor potential (TRP) channels in vascular cell types and lung models. His investigations determined novel mechanisms by which the cells can regulate its [sic] calcium handling process. . . . Failure in the balance of calcium levels inside the cells results in vascular barrier dysfunction resulting in various vascular diseases. [The petitioner] used his established approaches and identified a novel mechanism that the intracellular calcium levels serves as a turn-off switch and regulates the channel activity. . . . I can sincerely say that his findings will develop uniquely effective approaches to target the channel function and thereby alleviate vascular leakage and other abnormalities a cause for various vascular diseases. . . . We have submitted [the petitioner's] discoveries to the highly cited peer-reviewed journal *Molecular Pharmacology*, which is now under revision. . . . I am very much positive that this paper will be published . . . .

█ comments that the petitioner “was the first in the world to demonstrate that the uncontrolled proliferation of retinal endothelial cell upon the exposure of high glucose level . . . may be regulated using . . . Curcumin” in *Investigative Ophthalmology and Visual Science* in 2006, but there is no documentary evidence indicating that the petitioner’s work has been frequently cited by independent researchers or that his findings otherwise equate to original contributions of major significance in the field. According to the citation index submitted by the petitioner, the petitioner’s article in *Investigative Ophthalmology and Visual Science* has been independently cited to only a dozen times since its publication in 2006. █ also discusses the research findings published by the petitioner in *American Journal of Physiology-Cell Physiology* in 2009, but the citation evidence submitted by the petitioner fails to demonstrate that the petitioner’s work was of major significance in his field. For instance, according to the citation evidence submitted by the petitioner, his article in *American Journal of Physiology-Cell Physiology* has been independently cited to only thirteen times since its publication in 2009. Moreover, █ does not provide specific examples of how the petitioner’s work has been successfully implemented in the pharmaceutical industry or medical field, or otherwise equates to an original contribution of major significance in the field. The petitioner’s field, like most science, is research-driven, and there would be little point in publishing or presenting research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of “major

significance” in the field. 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. [REDACTED] also states that the petitioner’s findings regarding novel mechanisms by which cells can regulate the calcium handling process have been submitted for publication in *Molecular Pharmacology*. The AAO notes, however, that any impact resulting from this publication post-dates the March 28, 2011 filing date of the petition. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

Dr. Mohamed Trebak, Associate Professor, Center for Cardiovascular Sciences, Albany Medical College, states:

I am very much familiar with the important findings of [the petitioner] on calcium signaling in vascular diseases. I first met [the petitioner] when I was invited for a talk at the department of pharmacology at the University of Illinois Chicago. I quickly recognized that [the petitioner] made an incalculable contribution to Dr. Tiruppathi’s research program. He has utilized state-of-the-art molecular tools and identified a novel role for calcium channels expressed in vascular endothelial cells. [The petitioner’s] recent findings on canonical transient receptor potential (TRPC) channels and its components in mediating vascular permeability in endothelial cells has been submitted for publication to the journal *Molecular Pharmacology*, which is now under revision. I was extremely impressed by reading the reviews and editors’ positive comments and am expecting this paper to be published soon.

[REDACTED] states that the petitioner “identified a novel role for calcium channels expressed in vascular endothelial cells,” but [REDACTED] does not provide specific examples of how the petitioner’s finding has been applied throughout the pharmacology field or otherwise constitutes an original scientific contribution of major significance in the field. [REDACTED] also comments that the petitioner’s “recent findings on canonical transient receptor potential (TRPC) channels and its components in mediating vascular permeability in endothelial cells has been submitted for publication to the journal *Molecular Pharmacology*.” The AAO again notes that any impact resulting from this publication post-dates the March 28, 2011 filing of the petition. Eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] in the Department of Ophthalmology and Visual Sciences, University of Wisconsin School of Medicine and Public Health, states:

I was most excited when [the petitioner] approached me with an intention to collaborate in his studies. I was really impressed with his research findings delineating a unique

pattern of ion channels in retinal vascular angiogenesis. Since our laboratory is one among the few researchers developed the models to study retinal vasculature, I was very much interested to test his hypothesis in our retinal angiogenesis models. Our laboratory is now testing with the inhibitors specific to the identified calcium channels both in CNV [choroidal neovascularization] and OIR [oxygen-induced ischemic retinopathy] animal models. . . . I can sincerely say that these findings will be soon published in a highly cited peer-reviewed journal. Also I am highly confident that the novel findings, expertise, and knowledge he acquired in the past will serve to increase the possibility of his success to obtain funding for his research from federal agencies. In addition his recent achievement on obtaining an American Heart Association fellowship substantiates his extraordinary ability in the field of medicine.

states that the petitioner's findings regarding the inhibitors specific to the identified calcium channels both in CNV and OIR animal models "will soon be published" and that the petitioner recently received an American Heart Association fellowship (July 2011). The AAO notes that the petitioner published the aforementioned findings and received his American Heart Association fellowship subsequent to the petition's March 28, 2011 filing date. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding accomplishments as evidence to establish the petitioner's eligibility.

Associate Professor, Departments of Anesthesiology and Pharmacology, UIC, states:

After he joined laboratory in 2006, [the petitioner's] research interests were geared towards unraveling the mechanisms that lead to disruption and subsequent repair of the endothelial barrier. Using genetically modified mice models and other state-of-the-art technologies, his studies identified for the first time that a scaffolding region of the endothelial cell protein caveolin-1 accounts for the organization of calcium handling in vascular endothelial cells. His discoveries were published in a highly cited peer-reviewed journal, *The American Journal of Physiology-Cell Physiology*, 2009. Using caveolin-1 knockout mice [sic], [the petitioner] made the original discovery that the scaffolding domain of caveolin-1 interacts with the transient receptor potential channel (TRPC1) and inositol 1, 4,5 trisphosphate receptor (IP<sub>3</sub>R) and regulates calcium entry in endothelial cells. Finding this work particularly interesting, I cited [the petitioner's] original discoveries in my invited book chapter entitled "Caveolae and Signaling in Pulmonary Vascular Endothelial and Smooth Muscle Cells."

\* \* \*

[The petitioner's] novel findings substantially advance our understanding of the signaling events involved in the regulation of pulmonary endothelial barrier function and move us closer toward being able to control the molecular mechanisms that underscore the diseases processes inherent in ALI/ARDS patients and thereby may foster treatments that promote wound healing and prevent further pathogenesis.

██████████ opines that the petitioner's work "may foster treatments that promote wound healing," but ██████████ does not provide specific examples of how the petitioner's research findings were already of major significance to the field as of the date of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Id.* The documentation submitted by the petitioner does not show that his work has been effectively applied in the healthcare field as a medical or pharmaceutical treatment, that his 2009 article in *American Journal of Physiology-Cell Physiology* has been heavily cited by independent researchers, or that his findings otherwise equate to original scientific contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. 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.

██████████ and Chief of Diabetology, ██████████ Diabetes Specialties Centre, Madras Diabetes Research Foundation, India, states:

As the head of the research foundation where [the petitioner] did his Ph.D., I endorse his extraordinary research abilities. [The petitioner] has excellent credentials to his credit with a Ph.D. degree in retinal vascular biology. During his graduate studies, he had developed and established an in vitro retinal vascular model to study the signaling cascade involved in retinal angiogenesis. His innovative and uniquely successful approach to isolate and propagate the vascular endothelial cells from retina, procured from human cadaveric eyes is an appropriate model to study the pathogenesis associated with retinal discuses. Using this in vitro human cell model, he was perhaps the first in the world to demonstrate that the uncontrolled proliferation of retinal endothelial cell upon the exposure of high glucose level, a condition mimicking diabetes may be regulated using a supplement derived from a spice commonly used in the diet, Curcumin. His original findings were published in *Investigative Ophthalmology and Vision [sic] Science* in 2006.

██████████ comments on the petitioner's Ph.D. research that led to his article published in *Investigative Ophthalmology and Visual Science* in 2006. The petitioner has not established that the moderate number of independent citations for this article (twelve) is indicative of an original scientific contribution of major significance in the field. Any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every scientist who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole. In his letter of support, ██████████ fails to provide specific examples of how

the petitioner's Ph.D. work has been widely utilized by other research scientists or otherwise constitutes original contributions of major significance in the field.

Senior Scientist, National Institute of Nutrition, India, states:

[The petitioner's] work on the potentially important discoveries on developing a treatment model for retinal abnormalities is highly imperative. To my knowledge he was the first scientist who has developed and established a human retinal vascular model in India. His findings delineating the role of curcumin in regulating the hyperglycemia-induced retinal angiogenesis was [sic] published in a peer reviewed journal *Investigative Ophthalmology and Visual Sciences* [sic] in 2006.

In the same manner as [redacted] comments on the petitioner's Ph.D. research project and published article in *Investigative Ophthalmology and Visual Science*, but [redacted] does not indicate that the petitioner's work has resulted in effective pharmaceutical treatments for retinal abnormalities. Further, the citation evidence submitted by the petitioner for the preceding article does not show that his published findings have been heavily cited or were otherwise of major significance to his field.

Professor in the Department of Oral Biology, UIC, states:

One of [the petitioner's] discoveries was published in the *American Journal of Physiology-Cell Physiology* has created profound interest in the field of channel physiology. Since most of the discoveries in the past have addressed the functional aspects of calcium permeable channels, his research is the first of its kind to unveil the mechanisms that regulate the channel activity. In detail, his findings for the first time identified a scaffolding region of a protein (caveolin-1) playing a crucial role in the organization of calcium handling in vascular cells. Considering the fact that either increase or decrease in the level of calcium inside the cells is lethal, his findings addressed an important mechanism by which the cells can regulate the levels of calcium by itself. . . . [The petitioner's] novel findings on the regulatory functions of the scaffolding proteins may be used to alleviate the vascular abnormalities caused by irregular calcium homeostasis.

\* \* \*

[The petitioner's] extensive knowledge and expertise in the field of channel physiology urged me to approach him with an intention to seek his expert opinion and to collaborate with him.

\* \* \*

The findings made with his collaboration resulted in a publication in high impact peer reviewed journal, *Journal of Biological Chemistry*, 2010. The discovery added new insight and opened up a new area of research in the field of osteoblast differentiation, a condition that is essential for bone formation. These findings for the first time

demonstrated a novel role for calcium in regulating gene expression and osteoblast differentiation. It also created a high impact in the field of research in bone formation. His novel findings on the role of calcium may lead to development of new therapeutic strategy towards regulating osteoblast differentiation and bone formation.

discusses the petitioner's articles in *American Journal of Physiology-Cell Physiology* and *Journal of Biological Chemistry*, but the petitioner has not established that the limited number of independent cites to these two articles (thirteen and one, respectively) is indicative of original contributions of major significance in the field. also expresses her opinions that the petitioner's work "may be used to alleviate the vascular abnormalities caused by irregular calcium homeostasis" and "may lead to development of new therapeutic strategy towards regulating osteoblast differentiation and bone formation," but there is no documentary evidence showing that the petitioner's findings had already significantly impacted the field as of the date of filing. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Id.*

While the AAO acknowledges the originality of the petitioner's findings, the reference letters submitted by the petitioner do not indicate that independent researchers are currently applying the petitioner's research findings in their work, so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while the AAO does not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. The assertion that the petitioner's research results may someday result in treatment methods or therapeutic strategies is not adequate to establish that his findings are already recognized as major contributions in the field.

Professor of Medicine and Pharmacology, UIC, states:

[The petitioner] made key findings on the regulatory mechanisms of calcium entry in vascular endothelial cells. His findings were published in *American Journal of Physiology-Cell Physiology*, 2009, in which I serve as an Associate Editor. His findings was [sic] recognized and chosen to be one of the best articles in the issue, which resulted in a dedicated Editorial Focus published in the same issue by and an associate editor in the same journal, I can evidently state that only the research articles with original discovery (not merely replicating the work of others) will be considered for Editorial Focus.

█ comments on the petitioner's findings published in *American Journal of Physiology-Cell Physiology*, but █ does not provide specific examples of how the petitioner's work is being utilized by others in the field. Further, as previously discussed, the citation evidence submitted by the petitioner for the preceding article indicates that his findings have been independently cited to thirteen times. The petitioner has not established that this moderate level of citation is indicative of an original scientific contribution of major significance in the field. Moreover, while the petitioner's published findings are discussed in three paragraphs of a two-page Editorial Focus article appearing in the same issue of *American Journal of Physiology-Cell Physiology*, there is no documentary evidence demonstrating that the petitioner's findings on the regulatory mechanisms of calcium entry in vascular endothelial cells have been widely applied by independent researchers, utilized to develop an effective treatment method, or that they otherwise equate to original contributions of major significance in the field.

The opinions of the petitioner's references 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 reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a research scientist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

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

The petitioner has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner meets this regulatory criterion.

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

The petitioner submitted letters of support discussing his graduate research at Madras Diabetes Research Foundation and his postdoctoral research at both Wayne State University and UIC. While the petitioner performed admirably on the research projects to which he was assigned, there is no evidence demonstrating that his subordinate roles were leading or critical for Madras

Diabetes Research Foundation, Wayne State University, and UIC. For example, there is no organizational chart or other evidence documenting where the petitioner's positions fell within the general hierarchy of the researchers and professors at the institutions where he worked. The AAO notes that the petitioner's role at Madras Diabetes Research Foundation was that of a graduate student. Moreover, the petitioner's postdoctoral appointments at Wayne State University and UIC were designed to provide specialized research experience and training in his field of endeavor.<sup>4</sup> The petitioner's evidence does not demonstrate how his temporary appointments differentiated him from the other research scientists employed by the preceding institutions, let alone their tenured faculty and principal investigators. The documentation submitted by the petitioner does not establish that he was responsible for his research institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

### 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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a

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<sup>4</sup> With respect to Biochemists, the Department of Labor's Occupational Outlook Handbook, 2012-13 Edition, states: "Most biochemistry . . . Ph.D. holders begin their careers in a temporary postdoctoral research position, which typically lasts 2 to 3 years. During their postdoctoral appointment, they work with experienced scientists as they continue to learn about their specialties or develop a broader understanding of related areas of research. Postdoctoral positions frequently offer the opportunity to publish research findings. A solid record of published research is essential to get a permanent position doing basic research, especially for those seeking a permanent college or university faculty position." *See* <http://www.bls.gov/ooh/life-physical-and-social-science/biochemists-and-biophysicists.htm#tab-7>, accessed on October 25, 2012, copy incorporated into the record of proceeding.

final merits determination.<sup>5</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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.

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<sup>5</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).