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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**

[REDACTED]

B2

DATE: **JUL 17 2012** Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director, Texas Service Center, denied the employment-based immigrant visa petition on June 14, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on July 15, 2011. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically, in the field of molecular and cellular neurobiology, 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, the petitioner submits a brief and the following documents: (1) an unpublished January 4, 2010 AAO decision in a case unrelated to the petitioner’s case, (2) the director’s May 2, 2011 Request for Evidence (RFE), (3) the director’s June 14, 2011 denial of the petition, (4) an undated document entitled “Documentation of [the Petitioner’s] Scholarly Articles and Citations to Them,” (5) documents relating to the citations of the petitioner’s [REDACTED] (6) [REDACTED] (7) an undated document entitled “Faculty Scholarly Productivity Index,” [REDACTED] (8) the petitioner’s May 26, 2011 response to the director’s RFE, and (9) the petitioner’s April 13, 2011 letter filed in support of her petition. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO will discuss the remaining evidence under the criteria to which it pertains. That said, the AAO does not dispute that a researcher can be credited with collaborative research breakthroughs when the evidence supports such a conclusion, the proposition for which counsel submitted the unpublished AAO decision.

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 one 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 dominated 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, internationally 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.

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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).

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 finds that the petitioner has not met at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, in the final merits determination, the petitioner has not shown that she is one of a small percentage who have risen to the very top of the field or that she has 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.

## II. ANALYSIS

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

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

In her April 13, 2011 brief filed in support of the petition, the petitioner asserted that she meets the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i). In her May 26, 2011 response to the director's RFE, however, the petitioner did not further pursue this issue. On appeal, the petitioner specifically states that she "no longer claim[s] 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).

*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.* 8 C.F.R. § 204.5(h)(3)(iii).

When the petitioner initially filed the petition, she did not claim to meet the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The director in her May 2, 2011 RFE listed a number of articles and stated that the petitioner's "shared research contribution has attracted some mainstream national and international professional and other media attention in the field of endeavor." The director concluded that the petitioner meets this criterion. The AAO disagrees. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345

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

F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As listed in the director's RFE, the petitioner has provided the following documents relating to this criterion.

- (1) An online printout from [REDACTED]
- (2) An incomplete copy of [REDACTED]
- (3) An undated online [REDACTED] " from the website of Public Broadcasting Service (PBS)'s show *Nova Science Now*; and
- (4) Two articles posted on NewsRx.com: an [REDACTED] and a September 16, 2007 online article, entitled [REDACTED]

The AAO finds that none of the abovementioned documents or other documents in the record establish that the petitioner meets this criterion. First, the evidence is insufficient to show that the Nina Foundation online printout constitutes published material in a professional or major trade publication or other major media. In addition, the Nina Foundation online printout contains no information on the date or author(s) of the material, as required under the plain language of the criterion. Second, although the petitioner has provided an incomplete copy of a 2008 article published in *EMBO*, a professional or major trade publication, she has not provided evidence on the title or author(s) of the published material, as required under the plain language of the criterion. Third, even if the AAO were to conclude that the website of PBS's *Nova Science Now* constitutes other major media, it would not find that the online printout – a two-paragraph program description of an episode – constitutes published material. Moreover, the PBS online printout lacks information on the author(s) of the two-paragraph program description, as required under the plain language of the criterion. Fourth, even if the AAO were to conclude that the online articles posted on NewsRx.com constitute published material in a professional or major trade publication, it would not find that the articles meet the plain language of the criterion, as they do not indicate the author(s) of the material. The two "articles" posted on NewsRx.com are nearly identical, suggesting they are press releases rather than independent journalistic coverage. Finally, none of the material is "about" the petitioner. Rather, the material is about articles she has coauthored. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material "about the alien's work.")

Accordingly, the AAO concludes that the petitioner has not submitted sufficient evidence on published material about the petitioner in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

*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).

On appeal, the petitioner asserts that she meets the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). Her supporting documents include: (1) a March 23, 2011 reference letter from [REDACTED] obstetrics and gynecology at the University of Adelaide and Chair of the Australasian Chronobiology Society (ACS), (2) an April 6, 2011 reference letter from [REDACTED] at the University of Missouri-Kansas City School of Biological Sciences, (3) two reference letters, dated March 30, 2011 and May 24, 2011, from [REDACTED] neuroscience at the University of Pennsylvania School of Medicine, (4) a March 21, 2011 reference letter from [REDACTED] molecular cell and developmental biology at the University of Texas at Austin, (5) an April 5, 2011 reference letter from [REDACTED] (6) two reference letters, dated April 12, 2011 and May 17, 2011, from [REDACTED] biology at the Howard Hughes Medical Institute Department of Biology, and (7) a May 16, 2011 reference letter from [REDACTED] in France,

Although the petitioner's evidence shows she has been involved with a number of research studies that her references called "original" and "novel," the evidence is insufficient to show that the research constitutes contributions of major significance in the field. To show that the research constitutes major significance, the petitioner has presented a number of reference letters stating that her research findings were published in journals, and that other scientists have cited her articles. For example, [REDACTED] stated that the petitioner's [REDACTED] was cited many times "in less than 4 years by scientists in various specialties around the world." [REDACTED] stated that the petitioner's research "was published in the *Journal of Neuroscience*, a leading journal in the field of neuroscience with an average 5-year impact factor of 7.93." [REDACTED] also stated that the petitioner published an article in [REDACTED] a journal that "has a 5-year average impact factor of 14.198," and an article in *Proceedings of the National Academy of Sciences* (PNAS), a journal that "has a 5-year impact factor of 10.312." [REDACTED] stated that the petitioner's findings [REDACTED] was published in an article the "#2 most-cited journal during 1999-2009 and has a 5-year impact factor of 10.312." [REDACTED] further stated that the article "has been cited and reviewed in many top scientific journals [REDACTED] impact factor 15.049)." [REDACTED] stated in their letters that the petitioner's articles have been published in "high-impact," "esteemed" or "leading" research journals and cited by other scientists.

The AAO finds that publication of and citations to the petitioner's articles are not sufficient to show that the petitioner's research constitutes contributions of major significance. First, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). In *Kazarian*, the court reaffirmed its holding that the AAO's adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a published study is a *contribution of major significance*, the AAO looks at the impact an article has after publication. The petitioner has presented insufficient evidence to show that the journals that published her articles only publish research findings that are of major significance in the field of molecular and cellular neurobiology. As such, the fact that the petitioner's articles were published, even if they were published in well-known journals, is not sufficient to show that her research constitutes contributions of major significance.

Second, although the petitioner stated in her brief filed in support of the petition that the number of citations of her 2007 article was "4.5 folds higher than the [citation frequency of an average neuroscience article]," this evidence is insufficient for the AAO to conclude that the 2007 article or its associated research constitutes contributions of major significance. Specifically, the AAO lacks sufficient evidence to conclude how much more frequently an article should be cited as compared to the citation frequency of an average article for it to be considered a contribution of major significance in the field. Also, simply exceeding the average is insufficient; the citation level must be consistent with a contribution of major significance. On appeal, the petitioner also claims that "[her] research performance is among or sometimes even better than the top 10 research university faculty in the field of neuroscience." Once again, the AAO finds the comparison between the petitioner's citation frequency and the *average* citation frequency of neuroscience faculty misplaced.

Third, although many of the petitioner's reference letters mention the 5-year impact factor of journals that published the petitioner's articles, the AAO finds that the impact factor of a journal does not equate the impact factor of a particular article published in the journal. As such, the impact factor of journals is not sufficient to show that the petitioner's articles and the associated research findings published in the journals constitute contributions of major significance.

Fourth, the AAO finds that the petitioner's attendance at the 2007 Neurobiology of Drosophila International Conference and the 7th International Brain Research Organization (IBRO) World Congress of Neuroscience does not establish that her research constitutes contributions of major significance in the field of molecular and cellular neurobiology. Although both the petitioner and [REDACTED] stated that the petitioner was one of about 50 scientists who gave an oral presentation during the 2007 Neurobiology of Drosophila International Conference, neither provided evidence on the ultimate impact of her presentation after the conference.

Fifth, [REDACTED] asserts that the *Handbook of Cell Signaling* is “a highly-respected, widely used reference book in biomedical research.” The petitioner’s coauthor of the chapter in that book, [REDACTED] however, asserts that the chapter is a “review chapter.” The petitioner has not demonstrated that this chapter is an “original” contribution in the field rather than the compilation of the work of others.

Moreover, the petitioner’s assertion that “[she] was one of [ ] only 4 recipients (<1%) who were selected for the Australasian Chronobiology Society (ACS) Travel Award to present and speak at the [7th IBRO] World Congress [of Neuroscience]” is misleading. Although the petitioner claims that there were nearly 2,500 participants at the conference, she has not provided any evidence that all of the participants applied for the ACS Travel Award. [REDACTED] March 23, 2011 letter states that the \$500 ACS Travel Award was open to all who were interested in attending the conference. Neither the letter nor other evidence in the record, however, indicates how many people actually applied for the award. As such, the AAO finds the petitioner’s statement that she was one of less than one percent who received the award misleading. Moreover, although [REDACTED] stated that the award applicants were “evaluated and judged based on the originality of the studies, the significance of the findings and the overall merit of the applicants,” neither the letter nor other evidence in the record establishes that the petitioner received the award because her research constitutes contributions of major significance in the field.

Additionally, the AAO concludes that [REDACTED] assertion that the petitioner’s research, which identified “most, if not all, the phosphorylation sites,” influenced his own research insufficient to show the significance of the petitioner’s research. Likewise, the petitioner asserts that other scientists – she listed seven in her brief filed in support of the petition – have relied on her research or sought her advice on their research. One scientist’s finding that influences the research of another scientist, or a handful of scientists, does not show that the scientist’s finding constitutes contributions of a major significance in the field, as required under the plain language of the criterion. Although Professor [REDACTED] stated that “increasing evidence from other studies has confirmed the importance of” the findings included in the petitioner’s [REDACTED]

[REDACTED] he did not provide any information on these “other studies.” As such, even if the AAO were to conclude that the petitioner’s 2007 study is original or novel, it would not conclude that it constitutes a contribution of major significance in the field. Similarly, although [REDACTED] stated that the petitioner was “a lead researcher” of a project that was reported in the PBS’s show *Nova Science Now*, [REDACTED] failed to indicate how many lead researchers were involved in the project or whether the petitioner’s participation in the project constitutes an original contribution of major significance in the field of molecular and cellular neurobiology.

Initially, the petitioner submitted a few articles that thank the petitioner, among others, for providing a specific plasmid or confocal microscopy. While the petitioner’s research is clearly applicable in the field, these few articles cannot demonstrate that her work has had an impact consistent with a contribution of major significance. It does not follow that every researcher who performs original

research that adds to the general pool of knowledge and produces useful products has inherently made a contribution of major significance to the field as a whole.

Finally, some of the letters merely speculate that the petitioner's work will constitute a contribution in the future. For example, ██████████ in whose laboratory the petitioner was working at the time the petitioner filed the petition, asserts that her "'fly model for axon injury' will pioneer a new path for neuroscientists to approach [spinal chord injury] and will provide valuable insight to understand axonal degeneration in other neurological disorders as well." While ██████████ asserts that the petitioner's work with the *Drosophila* model has already had an impact, her support for this assertion includes the published material discussed above, which is minimal and includes promotional press releases.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).<sup>3</sup> The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at \*5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States*

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

*Att'y Gen.*, 745 F. Supp. 9, (D.C. Dist. 1990). The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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. The petitioner has not met this criterion. 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).

The evidence in the record shows that the petitioner has authored four articles and a chapter in a handbook:

- (1)
- (2)
- (3)
- (4)
- (5)

Based on the evidence in the record, the AAO concurs with the director's June 14, 2011 finding that the petitioner has shown evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. 8 C.F.R. § 204.5(h)(3)(vi).

#### B. Final Merits Determination

Based on the evidence in the record, the AAO concludes that the petitioner has not submitted the requisite evidence under at least three evidentiary categories. Although the petitioner meets 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.

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 fails 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 in the field of molecular and cellular neurobiology, or that she has 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 petitioner stated in her April 13, 2011 brief filed in support of the petition that she had received the ACS Travel Award in July 2007, a \$500 travel grant for her to attend the 7th IBRO World Congress of Neuroscience. According to [REDACTED] the recipients of the award "were selected through an international competition" and that "[m]any excellent researchers from dozens of countries, five continents applied for the award." Although Professor [REDACTED] stated in his March 23, 2011 letter that the petitioner was one of four people who received the travel grant, neither the letter nor other evidence in the record indicates the total number of people who applied for the travel grant. Furthermore, although [REDACTED] stated that the travel grant recipients were "evaluated and judged based on the originality of the studies, the significance of the findings, and the overall merit of the applicants," neither the letter nor other evidence in the record establishes that the travel grant constitutes a nationally or internationally recognized prize or award for excellence in the field of molecular and cellular neurobiology or is otherwise indicative of or consistent with sustained national or international acclaim. Notably, the petitioner listed the award as a "scholastic" honor on her curriculum vitae. The petitioner failed to provide official material from ACS confirming that travel grants are open to all attendees rather than limited to providing financial support to students.<sup>4</sup>

With regard to the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(ii), as discussed above, the AAO concludes that the petitioner has not met this criterion. In addition, in the online printout from Nina Foundation, the petitioner's name was mentioned once along with six other scientists. In the incomplete copy of the 2008 article published in EMBO, the petitioner's name was mentioned once, along with a number of scientists, and her research was described in two sentences in the multiple-page article. In the *NOVA Science Now* program description, the petitioner's name was not mentioned at all. In the two online articles posted on NewsRx.com, the petitioner's name was mentioned three times. The AAO concludes that the evidence is not indicative of the petitioner or her research receiving "[g]reat attention . . . from the general public and major media," as the petitioner asserts in her brief filed on appeal.

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. *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-

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<sup>4</sup> The ACS website, <http://www.australasianchronobiology.org/ACS2012.html>, accessed July 6, 2012 and incorporated into the record of proceeding, states with regard to the 2008 annual conference, the earliest one on the website, that ACS has funds to provide "modest support for students to travel to Melbourne." The website does not mention any other types of travel awards.

20. In addition, [REDACTED] March 30, 2011 letter indicates that the petitioner's research reported in *NOVA Science Now* was conducted in Professor [REDACTED] laboratory, by a team of scientists led by Professor [REDACTED] in which the petitioner was one of an unspecified number of lead researchers. The evidence indicates that the petitioner's role in the research was not as significant as that of [REDACTED]. Specifically, the letter states that "[REDACTED] team and [REDACTED] were featured in the popular PBS television series *NOVA science Now*, aired on July 20, 2007." Second, although the petitioner claims that her articles have been cited 100 times since 2006, this information does not establish national or international acclaim as the petitioner has not provided sufficient evidence showing that if a scientist's four articles published from 2006 to 2008 and a chapter in a handbook published in 2009 are cited 100 times, then the scientist has achieved national or international acclaim. In other words, the AAO does not have any information on either the publication or the citation frequency of a top, let alone a very top, molecular and cellular neurobiology researcher. As such, the AAO lacks relevant evidence against which to compare the petitioner's four articles, a book chapter or 100 citations.<sup>5</sup> Third, although the petitioner claims that she has participated in two international conferences – 2007 Neurobiology of Drosophila International Conference and the 7th IBRO World Congress of Neuroscience, the evidence fails to indicate that she has attended another international conference since 2007, or within approximately four years before she filed the petition in April 2011. Moreover, the record lacks evidence on the total number of international conferences in the field of molecular and cellular neurobiology in 2007 or in subsequent years, or other relevant evidence to support a finding that the petitioner's attendance to two international conferences in 2007 is indicative of sustained national or international acclaim.

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 publications in professional journals and books section of her curriculum vitae, the petitioner listed four articles and a book chapter. This is far less than the fifteen articles listed under the selected peer-reviewed publications section of [REDACTED] curriculum vitae, or the fifteen articles listed under the selected publication section of [REDACTED] curriculum vitae. The petitioner's four articles are also less than the eight articles listed under the selected recent publications section of [REDACTED] curriculum vitae or the five articles listed under the selection of recent publications section of [REDACTED] curriculum vitae. Similarly, although the petitioner did not provide a complete copy of [REDACTED] curriculum vitae, the incomplete copy shows that [REDACTED] has been an *ad hoc* journal reviewer for at least eight professional journals. This shows that [REDACTED] has a more active journal experience than the petitioner. As such, the petitioner's publication record is not indicative of or consistent with sustained national or international acclaim or status among the small percentage at the top of the field.

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<sup>5</sup> Although the petitioner has provided an online printout entitled "Faculty Scholarly Productivity Index" from *The Chronicle of Higher Education*, the data in the printout relates to universities' average citations per faculty and the universities' average citations per article, not citation frequency of top scientists or their articles.

attempts to compare the petitioner with individuals who have and are members of the National Academy of Sciences by pointing out that such highly ranked people in the field have also been invited to author articles in the *Handbook of Cell Signaling*. A comparison of the petitioner to individuals with such achievements does not result in a conclusion that the petitioner is among the small percentage at the very top of her field.

### 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 have 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 molecular and cellular neurobiology. 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.