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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 26 2012** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on April 16, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on May 18, 2010. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically, in the field of chromatography and analytical chemistry, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act or INA), 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* INA § 203(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) – (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submitted a brief and additional evidence, some of which was already part of the record.¹ For the reasons discussed below, the AAO affirms the director’s adverse decision that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that although the petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), he meets no other criterion. As such, he has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. In short, 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 –

¹ Counsel’s brief, dated June 14, 2010, is entitled Motion to Reopen and Reconsider the Texas Service Center’s Denial of I-140 Petition for Immigrant Worker – EB1 – Individual of Extraordinary Ability. Notwithstanding the title of the brief, the AAO will consider it as the counsel’s appellate brief, because in the Notice of Appeal or Motion (Form I-290B), filed on May 18, 2010, counsel indicated that he was filing an appeal, not a motion to reopen.

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

² 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).

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 presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

II. ANALYSIS

A. Evidentiary Criteria³

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

When counsel initially filed the visa petition on October 23, 2009, he claimed that the petitioner meets the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i). In response to the director's Request for Evidence, counsel again stated that the petitioner meets this criterion. The director concluded otherwise on April 16, 2010, finding that "Scholarships, fellowships and competitive postdoctoral appointments generally are not the type of nationally or internationally prizes or awards for excellence that would establish that the alien has achieved sustained national or international acclaim and recognition in the alien's field of expertise." In the instant appeal, counsel has not challenged the director's decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as he 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).

In his appellate brief, counsel claimed that "[the petitioner] is considered to be one of the leading experts on bioanalytics. His research has been cited in over fifty journals by researchers globally, who have relied on [his] work and techniques in their [] statistical and bioanalytical work." Counsel concluded that "[the petitioner] has indeed met his burden of proof in establishing that he has had numerous material published about his work and research in scientific journals and manuscripts."⁴ The AAO disagrees.

³ Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

⁴ In his brief, counsel asserted that the pertinent issue is "whether [his] work in the field for which classification is sought has been published in professional or major trade publications or other major media." This reading is inconsistent with the plain language of the regulation, which requires "[p]ublished material about the alien in professional or major trade publications or other major media . . ." 8 C.F.R. § 204.5(h)(3)(iii).

The plain language of this criterion states that the publish material must be both (1) in “professional” or “major” trade publications, and (2) “about” the alien. See 8 C.F.R. § 204.5(h)(3)(iii); *Hristov v. Roark*, No. 09–CV–2731, 2011 WL 4711885, at *10 (E.D.N.Y. Sept. 30, 2011). While the AAO accepts that the approximately fifty journals, citing the petitioner’s publications, were published in “professional or major trade publications,” the AAO is not persuaded that the published material was “about the alien . . . , relating to the alien’s work in the field for which classification is sought.” See 8 C.F.R. § 204.5(h)(3)(iii).⁵ Specifically, although in his May 27, 2010 letter, [REDACTED] claimed that in his 2006 article on chiral separations, he “cited [the petitioner’s] articles on the separation of the isomers of the drugs Ibuprofen and Verapamil,” he did not assert that his article was “about the alien . . . , relating to the alien’s work in the field for which classification is sought,” as required under 8 C.F.R. § 204.5(h)(3)(iii). Moreover, other than stating that his 2006 article is “on chiral separations,” Professor Ward provided no other information on the contents of his article. As such, the AAO cannot find that Professor Ward’s article was “about the alien.”

Similarly, in his May 12, 2010 email, [REDACTED] an analytical chemistry professor at [REDACTED] stated that he “cited one of the research articles of [the petitioner] . . . in [his] publication titled [REDACTED], [REDACTED],” which was published in *International [REDACTED]* a peer review journal.” Other than providing the title and the name of the publisher of his article, [REDACTED] provided no other information as to the contents of his article. As such, the AAO is unable to find that [REDACTED]’s article was “about the alien.”

The May 18, 2010 letter from [REDACTED] suffers from the same deficiency. Professor Wasiak stated in his letter that he “cited” one of the petitioner’s articles in his 2008 article, published in the [REDACTED]. Other than providing the title of his article, Professor Wasiak, failed to provide sufficient information on the contents of his 2008 article. Again, the AAO is left with insufficient evidence to conclude that Professor [REDACTED]’s article was “about” the petitioner, “relating to [his] work in the field for which classification is sought.” See 8 C.F.R. § 204.5(h)(3)(iii).

In addition to the abovementioned evidence, in coming to the conclusion that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(iii), the AAO reviewed all of the petitioner’s evidence in the record, including:

⁵ According to counsel, the petitioner’s publications were cited in articles published in the *Analytical Chemistry*, which Professor [REDACTED] claimed to be the premier journal in the field of chemistry; *International Journal of Analytical Chemistry*, which [REDACTED] claimed to be a peer review journal; and *Current Drug Discovery Technologies*, which Professor [REDACTED] claimed to be a peer review journal. Based on the petitioner’s evidence, including the June 2010 SCOPUS online printouts and his reference letters, the AAO finds that articles, citing the petitioner’s publications, were published in “professional or major trade publications.”

1. [REDACTED] May 24, 2010 letter, in which he claimed that the petitioner's articles were "cited by world wide [sic] researchers in over 50 internationally acclaimed journals," but failed to specify the contents of any of the "over 50" journals or provide information on whether any was about the petitioner or his work.
2. A May 2010 online printout from the Humboldt Network that indicates that [REDACTED] a chemistry professor, who served as the [REDACTED] 2005 to 2007, at the [REDACTED] was listed as the first author in at least seven articles published in 2007. The petitioner was listed as the second author in one of the seven articles and the last author (fourth) in another article.
3. An incomplete and illegible copy of the article [REDACTED] that cites the petitioner's 2005 article among over forty references, but that contains insufficient evidence on the contents of the incomplete article.
4. An incomplete and illegible copy of the article [REDACTED] that cites the petitioner's 2006 article among seven references, but that contains insufficient evidence on the contents of the incomplete article.
5. An incomplete and illegible copy of the article [REDACTED] that cites the petitioner's 2005 and 2006 articles among over fifty references, but that contains insufficient evidence on the contents of the incomplete article.
6. The March 2010 article [REDACTED] that cites the petitioner's 2006 article among thirteen references, but that does not mention the petitioner in the body of the article.
7. The 2010 article [REDACTED] that cites the petitioner's 2007 article among over thirty references, but that does not mention the petitioner in the body of the article.
8. The 2009 article [REDACTED] that cites the petitioner's 2006 article among nearly thirty references, but that does not mention the petitioner in the body of the article.

The AAO has routinely held that 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 his work. *See*

Negro-Plumpe v. Okin, 2:07–CV–820–ECR–RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Moreover, as noted above, the evidence the petitioner submitted does not sufficiently inform the AAO of the contents of all the published material that cites the petitioner’s work and/or show that the published material even mentions the petitioner in the body of the articles. Accordingly, the AAO concludes that the petitioner has not met this criterion that requires a showing that the published material is “about [him] . . . , relating to [his] work in the field for which classification is sought.” See 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

Along with counsel’s appellate brief, the petitioner submitted an April 11, 2010 letter from [REDACTED] inviting the petitioner to be a reviewer for the publication. Both the June 10, 2010 and May 11, 2010 Interscience online printouts state that the [REDACTED] is “the most comprehensive source in separation science, as all areas of chromatographic and electrophoretic separation methods are covered.” The petitioner also submitted June 2010 online printouts indicating that he reviewed and recommended for publication two articles, entitled [REDACTED] and [REDACTED]. Accordingly, the AAO finds that the petitioner has met the criterion under 8 C.F.R. § 204.5(h)(3)(iv).⁶

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).

In his appellate brief, counsel, relying solely on the reference letters, including those from Professor [REDACTED] a professor at the [REDACTED] and [REDACTED] a senior scientist at [REDACTED], asserted that the petitioner has established that “[h]e is a leading authority on [c]hromatography, viable methods of separation of chiral drugs and enantiomers, whose research has been used by leading scientists in the field.” Under the plain meaning of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must show not only that his scientific contributions are original, but that they are of major significance in the field of chromatography and analytical chemistry. The mere allegations, even assuming they were true, that the petitioner is a leading authority in the field whose research has been cited by leading scientists do not establish that the petitioner’s contributions are either original or of major significance.

According to [REDACTED] May 27, 2010 letter, the petitioner’s 2005 article [REDACTED]

⁶ As the AAO finds that the petitioner has met the criterion under 8 C.F.R. § 204.5(h)(3)(iv), it will not address counsel’s additional arguments relating to the criterion.

Chromatography” and his 2004 article “Resolution of (±) Isoproterenol using (±) [redacted]” constitute studies that “are of significant importance in the separation of chiral molecules” Merely repeating the language of the statute or regulations, however, 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. Attorney General of United States*, 745 F. Supp. 9, (D.C. Dist. 1990). [redacted] letter focuses on the importance of the area of research and fails to demonstrate that the petitioner’s two articles constitute original contributions of major significance in the field of chromatography and analytical chemistry.

[redacted] May 12, 2010 email, citing the petitioner’s 2006 article “[redacted]” states,

In order to determine recovery and potency of each component present in the combined form of the drug products are very challenging job [sic] in the pharmaceutical industry and to the best of [redacted] knowledge, [the petitioner] was the first who developed such [a] sensitive and precise method for the extraction, separation and quantification which can benefit the pharmaceutical industry by reducing time, efforts and cost of the drug product.

It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). [redacted]’s assertion that the petitioner’s work “can” benefit the pharmaceutical industry, not that it already has benefitted the pharmaceutical industry, is insufficient to show that the petitioner was eligible for the visa petition at the time of filing on October 23, 2009. Assuming *arguendo* that the petitioner’s work had made certain aspects of the pharmaceutical industry more efficient, the petitioner has not provided a valid legal basis to support the argument that an increase in efficiency constitutes contributions of major significance in the field of chromatography and analytical chemistry. Moreover, the AAO notes that it is not clear if both [redacted] were discussing the same work or research the petitioner had done, as they cited different articles published in different years.

[redacted] May 18, 2010 letter states,

[The petitioner] during the last decade has put a lot of efforts into extraordinary research work on the resolution of racemic compounds. His work attracted a great attention in analytical chemistry, especially in pharmaceutical analysis. [The petitioner] has developed some outstanding methods which are rapid and sensitive for the separation of enantiomers, which will be beneficial for pharmaceutical industry in

the process of producing a drug containing only single enantiomer instead of the racemate.

This letter fails to establish that the petitioner's work on the resolution of racemic compounds constitutes either original contributions or contributions of major significance. [REDACTED] also appears to be speculating, or merely predicting, on the importance of the petitioner's work, by stating that it "will be beneficial for the pharmaceutical industry" Moreover, the petitioner has not shown that this predicted benefit of a process that "produc[es] a drug containing only single enantiomer instead of the racemate" constitutes contributions of major significance in the field of chromatography and analytical chemistry.

The May 12, 2010 letter from [REDACTED]

suffers from the same deficiency. It claims that between 2002 and 2006, "[the petitioner] successfully developed extremely important purification methods and many novel separation techniques for [certain] drug molecules. This has been really very helpful and useful to develop single enantiomers containing drug products that will give [a] highly efficient drug for a particular type [of] disease." Like [REDACTED]'s letter, [REDACTED] letter does not show that an increase in efficiency or effectiveness, at an unspecified level, constitutes contributions of major significance in the field of chromatography and analytical chemistry.

[REDACTED]'s May 10, 2010 letter, which discusses the petitioner's work in broad and vague terms, suffers the same deficiency in that it fails to establish how the petitioner's work constitutes either original contributions or contributions of major significance in the field of chromatography and analytical chemistry. Specifically, in his letter, [REDACTED] described the petitioner's work in one sentence and he predicted that his work "might bring a new era in the separation of enantiomers of racemic compounds" [REDACTED]'s speculation, or mere prediction, does not establish that, at the time of the visa petition filing, the petitioner's work constituted either original contributions or contributions of major significance. Similarly, [REDACTED] June 2, 2009 letter, in which he predicted or speculated that "[the petitioner's] work is expected to be beneficiary in the clinical chemistry, biochemistry and pharmaceutical industry for new product development," is insufficient to show that, at the time of the visa petition filing, the petitioner's work constituted contributions of major significance in the field of chromatography and analytical chemistry. The same is true for [REDACTED]'s May 24, 2010 letter. In his letter, [REDACTED] claimed that the petitioner's work has "led to the development of a rapid method for the separation of the optical isomers of several DL amino acids," but failed to explain how such method already constituted contributions of major significance at the time of the visa petition filing. [REDACTED] also used similar speculative language, stating that the petitioner's work "will directly benefit the patients suffering from cancer." [REDACTED]'s speculation, or mere prediction, does not establish that the petitioner's work constitutes either original contributions or contributions of major significance.

At least one article, [REDACTED]

[REDACTED] published by the *Sensors and Actuators B*:

Chemical, debates the significance of the petitioner's work on thin layer chromatography, noting that it is among "methods reported [to] suffer from disadvantages such as laborious, time-consuming and tedious liquid-liquid extraction or solid-phase extraction as sample preparation procedures, long response time, requirement of expensive instruments and low detection capability." This assertion does not support the petitioner's claim that his work constitutes contributions of major significance in the field of chromatography and analytical chemistry.

Finally, the petitioner's evidence, specifically, the June 2010 SCOPUS online printouts, shows that none of his eight articles was cited more than twelve times. This number of citations is not, by itself, indicative of contributions of major significance in the field of chromatography and analytical chemistry.

Accordingly, based on a review of all the evidence in the record, including documents not specifically mentioned above, the AAO concludes that the petitioner has not provided evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of chromatography and analytical chemistry. 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 petitioner provided evidence that he authored eight articles, published in [REDACTED] and other publications. Although the petitioner has not submitted sufficient evidence showing that these are "major trade publications or other major media," the AAO does find that they constitute "professional" publications.⁷ Specifically, he listed the eight articles, published between 2004 to 2007, in his curriculum vitae, provided copies of the articles, and provided a number of reference letters and a June 2, 2010 SCOPUS online printout, showing that he was listed as one of the authors in the eight articles. Accordingly, the AAO finds that the petitioner has met the criterion under 8 C.F.R. § 204.5(h)(3)(vi).⁸

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

In his appellate brief, counsel asserted that the petitioner has performed in a leading or critical role for two organizations and establishments, namely Amneal Pharmaceuticals, where he worked, and Cornerstone Pharmaceuticals, Inc., where he works. The brief further states:

⁷ The publication *Biomedical Chromatography* is a "highly respected journal," according to [REDACTED] letter, and a "highly ranked journal" according to [REDACTED]'s email. The publication *Journal of Chromatography B* is a "high[ly] ranked journal," according to [REDACTED]'s letter, and a "internationally acclaimed journal[]," according to [REDACTED].

⁸ As the AAO finds that the petitioner has met the criterion under 8 C.F.R. § 204.5(h)(3)(vi), it will not address counsel's additional arguments relating to the criterion.

Prior to joining Cornerstone Pharmaceuticals, Inc., [the petitioner] was a Research Scientist with *Amneal Pharmaceuticals*[,] formally known as *Intrapharm, Inc.* [He] was selected by *Intrapharm, Inc.* after a stringent review process

(Emphasis added.) In his June 14, 2010 letter, [redacted], a senior research scientist at [redacted] stated that “[redacted] was “acquired by [redacted] (Emphasis added.) In other words, although counsel claimed in the appellate brief that the petitioner had joined [redacted] his reference [redacted] claimed that he had joined [redacted]. Moreover, in his curriculum vitae, the petitioner made no mention of ever working for [redacted]. Rather, he claimed that after working for [redacted] from 2006 to 2008, he worked for [redacted], not [redacted] as claimed in both the appellate brief and [redacted]. In addition, the petitioner submitted a letter, dated May 19, 2009, from [redacted] at [redacted] in which he claimed that he had worked with the petitioner at [redacted] yet, this employment is not reflected in the petitioner’s curriculum vitae. As the petitioner has provided inconsistent documents, “it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Irrespective of the inconsistencies, the petitioner has not established that he has performed in a leading or critical role in [redacted], [redacted] or [redacted], and he has not shown that either of these organizations or establishments has a distinguished reputation. First, the petitioner has provided no documents explaining the role he had in [redacted] or a description of Intrapharm, Inc. As such, the AAO finds that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with Intrapharm, Inc.

Second, the AAO finds that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with either [redacted], or [redacted]. The petitioner submitted two letters from [redacted] who was last employed by [redacted], or [redacted] four years ago in 2008. In his May 19, 2009 letter, [redacted] claimed that “[he] worked at [redacted] . . . from 2006 to 2008,” and made no mention of [redacted]. He claimed that,

[The petitioner] has been a key contributor and valuable team member on several of our drug product development project [sic] at Interpharm, Inc. including the development of oral contraceptive, delayed release proton pump inhibitor and anti-Alzheimer’s drugs. Several drug products have been got [sic] approved from the USFDA because of [the petitioner]’s valuable contribution in the product filling [sic].

In his subsequent letter, dated June 14, 2010, [REDACTED] stated that the petitioner "joined [REDACTED] as a Research Scientist." He further discussed the petitioner's role in [REDACTED] and noted that on an unspecified date, [REDACTED] acquired [REDACTED]. Although in this letter, his description of the petitioner's role in [REDACTED], and [REDACTED] was more detailed and specific than that which was provided in his May 19, 2009 letter, the AAO concludes that, at best, [REDACTED] letters show that the petitioner was a productive science researcher in a company with an unknown number of science researchers. There is simply insufficient evidence in the record from which the AAO can find that the petitioner, as a science researcher, played a leading or critical role in [REDACTED] as compared to others in the company. In addition, the AAO notes that no one currently associated with the company has provided any evidence supporting the petitioner's claim that he has performed a leading or critical role in the company.

Moreover, the record contains insufficient evidence establishing either [REDACTED] as an organization or establishment that has a distinguished reputation. Based on counsel's appellate brief and [REDACTED] letters, [REDACTED] appears to be a pharmaceutical company that produces drug products that have received the U.S. Food and Drug Administration's approval. This alone, however, is insufficient to show that it is an organization or establishment that has a distinguished reputation. The petitioner has provided insufficient evidence demonstrating that in the pharmaceutical industry, [REDACTED] has a distinguished reputation. As such, the AAO finds that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with this company.

Third, the AAO finds that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with Accumed, Inc. The petitioner claimed in his curriculum vitae that in 2008, he was a research associate for this company. Other than listing his employment responsibilities, the petitioner has provided no other evidence showing that he performed either a leading or critical role in [REDACTED]. Also, no one from the company has claimed that the respondent had such a role in 2008. Moreover, the record contains insufficient evidence establishing Accumed, Inc., as an organization or establishment that has a distinguished reputation in the pharmaceutical industry. As such, the AAO finds that the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with this company.

Similarly, AAO finds that the petitioner has not performed in a leading or critical role in [REDACTED] where the petitioner works. In support of his visa petition and the instant appeal, the petitioner submitted a number of reference letters, including (1) two letters from [REDACTED] one undated and one dated May 24, 2010; (2) two letters from [REDACTED] dated June 3, 2009 and May 24, 2010; (3) an undated letter from [REDACTED] Head; (4) a May 20, 2010 letter from [REDACTED] Chief Executive Officer; and (5) a May 14, 2010 memorandum from [REDACTED]

LureatePhama's Senior Quality Control Manager. The reference letters note that the petitioner's work resulted in the advancement of a number of [REDACTED]'s projects, including CPI-613 and EmPAC, and the development of two chromatographic analytical assays. The letters also indicate that the petitioner was promoted to the position of an analytical/bioanalytical division group leader on May 24, 2010.

The plain language of the criterion indicates that the petitioner must have performed in a leading or critical role for organizations or establishments, not merely for projects developed within the organizations or establishments. Also, the petitioner must show eligibility for the visa petition at the time of its filing on October 23, 2009. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner's May 2010 promotion, therefore, does not establish that as of October 2009, he had performed in a leading or critical role for [REDACTED]. In addition, although the petitioner might be a well-regarded scientist in the company, as the record is devoid of an organizational chart or information on the number of scientists the company employed in October 2009, the AAO lacks sufficient evidence to conclude that the petitioner had performed in a leading or critical role for the company at the time he filed the visa petition.

Moreover, the AAO notes that a June 10, 2010 [REDACTED] online printout about the company mentions the petitioner's references, but does not mention the petitioner. [REDACTED]'s press releases, dated May 27, 2009, November 11, 2009, and April 19, 2010, respectively, that discuss CPI-613, one of the projects the petitioner was involved in, include remarks from [REDACTED] and mention other scientists. But they do not mention the petitioner. The company's March 22, 2010 press release similarly does not mention the petitioner. Furthermore, in his May 24, 2010 letter, [REDACTED] "will" evaluate the potential of the technologies that the petitioner assisted in developing, and asserted that the petitioner "will play a central role in helping [REDACTED] determine the effectiveness of these technologies." The letter indicates that as of May 2010, [REDACTED] was speculating as to the impact of the technologies and predicting the petitioner's role in advancing the technologies. This does not support the petitioner's assertion that at the time of his visa petition filing in October 2009, he had performed in a leading or critical role for the company.

In short, after evaluating all of the petitioner's evidence in the record, the AAO concludes that the petitioner does not perform a leading or critical role in Cornerstone Pharmaceuticals, Inc., and the petitioner has not met the criterion under 8 C.F.R. § 204.5(h)(3)(viii) based on his involvement with this company.⁹

Furthermore, even assuming *arguendo* that the petitioner has performed a leading or critical role for [REDACTED] the plain language of 8 C.F.R. § 204.5(h)(3)(viii) requires the

⁹ Based on the petitioner's evidence, including a March 22, 2010 press release indicating that [REDACTED] has entered into a collaboration agreement with the U.S. National Institute of Cancer, the AAO is satisfied that [REDACTED] Inc. has a distinguished reputation.

petitioner to show his leading or critical role in more than one organization or establishment. The petitioner has not made such a showing.

Accordingly, based on all the evidence in the record, including documents not specifically mentioned above, the AAO concludes that the petitioner has not submitted evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. As such, the AAO dismisses the petitioner's appeal of the director's adverse decision.

B. Summary

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

Had the petitioner 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 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 final merits determination.¹⁰ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

¹⁰ 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* INA §§ 103(a)(1), 204(b); 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).


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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. INA § 291, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.