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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

PUBLIC COPY

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DATE: **MAY 03 2012**

Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

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 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 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 through extensive documentation and 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, the petitioner asserts that she is "one of the small percentage who has risen to the top of the field." For the reasons discussed below, the AAO will uphold the director's determination that the petitioner has not established her eligibility for the exclusive classification sought.

Specifically, the AAO acknowledges the director's conclusion that when the submitted evidence is simply counted, the petitioner has submitted qualifying evidence that meets the plain language of three of the categories of evidence as required by the regulation at 8 C.F.R. § 204.5(h)(3). These criteria are judging the work of others, original contributions of major significance, and authorship of scholarly articles pursuant to 8 C.F.R. §§ 204.5(h)(3)(iv), (v), and (vi). As explained in the AAO's final merits determination, however, much of the evidence that technically qualifies under some of those criteria reflects routine duties or accomplishments in the field that do not compare with the accomplishments of the most experienced and renowned members of the field.¹ Thus, such evidence is not consistent with a finding that the petitioner enjoys sustained national or international acclaim at the very top of the field. As will be discussed further in the final merits determination, while the petitioner notes the caliber of the references who support the petition, their accomplishments, appointments as a dean, director or professor, editorial positions, and publication records only reinforce the AAO's conclusion that the top of the petitioner's field is far higher than the level she has achieved.

I. Law

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

¹ The legal authority for this two-step analysis will be discussed at length below.

(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. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

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

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.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." *Id.* at 1121-22.

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

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

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 8 C.F.R. § 204.5(h)(3)(vi).

"sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will apply the two-step analysis dictated by the *Kazarian* court.

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 1, 2010, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner earned her Ph.D. in Microbiology (2007) under the direction of [REDACTED]

[REDACTED] At the time of filing, the petitioner was working as a postdoctoral research associate at Washington University in St. Louis (WASL) under the supervision of [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a letter indicating that she "is a member in good standing of the American Society for Microbiology (ASM)," but she failed to submit documentary evidence showing that the ASM requires outstanding achievements of its members, as judged by recognized national or international experts in her field.

³ The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

The petitioner submitted a certificate issued by ██████████ 1000, certifying that the petitioner “is an Associate Faculty Member to ██████████ a member of Faculty of 1000 for the ‘Microbial Growth & Development’ Section.” The petitioner also submitted general information about Faculty of 1000 from its website, but the online material submitted by the petitioner did not specify the organization’s membership requirements. In response to the director’s request for evidence (RFE), the petitioner submitted an unsigned letter from ██████████ Managing Director, Faculty of 1000, stating:

[The petitioner] was appointed at the request of ██████████ a Faculty of 1000 Member of the Microbial Growth & Development Faculty, as an Associate Faculty Member to assist her in evaluation the scientific literature for Faculty of 1000 (www.f1000.com).

Associate Faculty Members, such as [the petitioner] are nominated colleagues, upon [sic] their extraordinary ability, of Faculty Members who they collaborate with to identify scientifically noteworthy papers and write short commentaries that reflect the opinion of both of them.

As the preceding letter from ██████████ is unsigned and does not provide any contact information, it has no evidentiary value. The letter asserts that Associate Faculty Members are nominated by colleagues based on “their extraordinary ability,” but merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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*, 1997 WL 188942 at *5 (S.D.N.Y.). Regardless, the AAO cannot conclude that receiving a nomination from one’s immediate supervisor is indicative of outstanding achievements. There is no documentary evidence (such as membership bylaws or rules of admission) showing that Faculty of 1000 requires outstanding achievements of its “Associate Faculty” members, as judged by recognized national or international experts in the petitioner’s field. Moreover, the AAO notes that petitioner’s “Associate Faculty” membership is less restrictive than the Faculty membership designation held by individuals such as ██████████

The petitioner submitted evidence showing that she is a “Full Member” of Sigma Xi which has membership “numbering nearly 65,000 active members.” The submitted materials about Sigma Xi indicate that the society invites to full membership “those who have demonstrated noteworthy achievements in research.” These achievements must be evidenced by “publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested.” A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that Sigma Xi does not take a particularly strict view of noteworthy achievements. Specifically, in response to the director’s RFE, the petitioner submitted a July 29, 2010 letter from ██████████, stating that the “Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers.” In addition, “an earned doctoral degree may be substituted for one paper.” The AAO cannot conclude that primary authorship of one or two papers constitutes outstanding achievements.

In light of the above, the petitioner has not established that she meets the plain language requirements of 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 primarily 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.⁴

The petitioner submitted an article in *Oklahoma Daily*, the University of Oklahoma's student newspaper, entitled "Professor researches alternative car fuels," but the date of the article was not included as required by the plain language of this regulatory criterion. The article mentions the petitioner and quotes her, but it is primarily about [REDACTED]. The petitioner also submitted a March 23, 2005 article posted on the website of *Oceanus* magazine entitled [REDACTED] but the article, which does not even mention the petitioner, is not about her. Moreover, there is no evidence (such as circulation information or readership data) showing that *Oklahoma Daily* and the website of *Oceanus* magazine qualify as major media.

The petitioner submitted citation evidence indicating that articles she coauthored with her [REDACTED] [REDACTED] have been cited to by other researchers in their publications. Articles which cite to the petitioner's work are primarily about the authors' own work or recent developments in the field in general, and are not about the petitioner or even her 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, 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 articles are "about" the petitioner. The research articles citing to the petitioner's work are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In light of the above, the petitioner has not established that she meets the plain language requirements of 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.

⁴ 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 submitted a September 5, 2008 e-mail message from the [REDACTED] [REDACTED] requesting that she review a manuscript entitled [REDACTED] at new cell poles and contributes to the timing of cell division." On September 7, 2008, [REDACTED] the forwarded the message to the petitioner stating: "If you have any interest in reviewing this let me know." There is no documentary evidence showing that the petitioner actually completed the review.

The petitioner submitted a February 17, 2009 e-mail message from the Editor of *Journal of Bacteriology* addressed to [REDACTED] for reviewing a manuscript entitled [REDACTED]. The message included a copy of the reviewer evaluation comments submitted by [REDACTED]. There is no documentary evidence indicating that the petitioner actually completed the preceding manuscript review.

The petitioner submitted a February 25, 2009 e-mail message from [REDACTED] [REDACTED] addressed to [REDACTED] requesting that she review a manuscript entitled [REDACTED] in [REDACTED]

On February 25, 2009, Dr. Levin the forwarded the message to the petitioner and asked if she was interested in reviewing the manuscript. There is no documentary evidence showing that the petitioner actually completed the manuscript review.

The petitioner submitted e-mail correspondence from the Editor of *Journal of Bacteriology* addressed to [REDACTED] for reviewing a manuscript entitled [REDACTED]. The message included a copy of the review comments submitted by [REDACTED]. There is no documentary evidence showing that the petitioner actually completed the preceding manuscript review.

While the preceding documentation indicates that [REDACTED] reviewed manuscripts for *Genes & Development*, *Journal of Bacteriology*, and *FEMS Microbiology Letters*, there is no documentary evidence from the preceding journals' editorial staff confirming the petitioner's participation as a reviewer. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The record contains no review requests directly from the preceding journals' editorial staff addressed to the petitioner. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of a supervisor requesting input and assistance from his or her subordinate. In this instance, there is no documentary evidence establishing that the petitioner, rather than her supervisor [REDACTED] served as part of a formal judging process for the above journals.

The petitioner submitted evidence demonstrating that she and [REDACTED] provided evaluation comments for three research publications for Faculty of 1000 Biology in 2009. As previously discussed, the record includes a certificate from the Managing Director of Faculty of 1000 stating that the petitioner "is an [REDACTED] a member of Faculty of 1000 for the [REDACTED] Section." In response to the director's RFE, the petitioner submitted e-mail messages from Faculty of 1000 dated February 16, 2010 and July 21, 2010 identifying her as an "Associate Faculty Member" and requesting that she submit recommendations and highlight interesting articles. There is no documentary evidence showing that the petitioner actually completed her 2010 assignments. Further, the July 21, 2010 e-mail request from Faculty of 1000 post-dates the petition's March 1, 2010 filing date. 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. 45, 49 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider articles evaluated by the petitioner after March 1, 2010 in this proceeding.

The submitted documentation demonstrates that the petitioner provided evaluation comments for three research publications for Faculty of 1000 Biology as of the petition's filing date. This documentation minimally satisfies the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

The director determined that the petitioner had submitted qualifying evidence of original contributions of major significance in her field. The record contains several reference letters attesting to the significance of the petitioner's work supported by numerous citations that note the importance of her graduate research under the guidance of [REDACTED]. Thus, the director found that the petitioner had submitted qualifying evidence pursuant to 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.

The petitioner has documented her co-authorship of seven journal articles with [REDACTED] as of the petition's filing date and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets the plain language requirements of 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 her graduate research at the University of Oklahoma and her postdoctoral research at WUSL. In response to the director's RFE, the petitioner submitted an August 6, 2010 letter from [REDACTED] stating:

[The petitioner] worked for the University of Oklahoma as a Graduate Researcher, leading a project that generated several scientific publications . . . and was critical to generating further research revenue for the University of Oklahoma. The generation of scientific publications is critical in maintaining the University's international reputation and [the petitioner] played a leading role in generating these publications. Her work was also critical in terms of generating knowledge for the successful funding of a Department of Energy grant to The University of Oklahoma in 2008. She also played a leading role in generating the grant application.

asserts that the petitioner performed in a leading and critical role as a graduate researcher at the University of Oklahoma, but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). While the petitioner has performed admirably on the research projects and other tasks to which she was assigned, there is no evidence demonstrating that her subordinate roles were leading or critical for the University of Oklahoma and WUSL. 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 universities where she worked. The AAO notes that the petitioner's role at the University of Oklahoma was that of a graduate student. Moreover, the petitioner's postdoctoral appointment at WUSL is designed to provide specialized research experience and training in her field of endeavor.⁵ The petitioner's evidence does not demonstrate how her temporary appointments differentiated her from the other research scientists employed by the preceding universities, let alone their tenured faculty and principal investigators. The documentation submitted by the petitioner does not establish that she was responsible for her universities' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The petitioner submitted a letter from stating that the petitioner's "annual salary is \$36,996." The plain language of this regulatory criterion requires the petitioner to submit evidence of a "high salary . . . in relation to others in the field." The petitioner offers no basis for comparison showing that her salary was significantly high in relation to other research scientists in her field. Accordingly, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

⁵ With respect to Microbiologists, the Department of Labor's Occupational Outlook Handbook, 2012-13 Edition, states: "Many microbiology 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." See <http://www.bls.gov/ooh/life-physical-and-social-science/microbiologists.htm#tab-4>, accessed on April 27, 2012, copy incorporated into the record of proceedings.

Summary

In light of the above, the petitioner has submitted evidence that meets the plain language of the specific regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) – (vi) and therefore qualifies under three of the categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability.

B. Final Merits Determination

The AAO will next 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 the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(ii) – (iv), (viii) and (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, the evidence submitted by the petitioner fails to demonstrate that the ASM, Faculty of 1000, and Sigma Xi require outstanding achievements of their members, as judged by recognized national or international experts in her field. Further, the AAO notes that the petitioner's "Associate Faculty" membership in Faculty of 1000 is less restrictive than the Faculty membership designation held by [REDACTED]. Thus, the AAO cannot conclude that the petitioner's "Associate Faculty" designation is an indication that she "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has not established that her memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii), the petitioner submitted articles from *Oklahoma Daily* and the website of *Oceanus* magazine, but the articles are not about the petitioner or indicative of her being at the very top of her field. Further, there is no circulation evidence showing that the preceding articles were in professional or major trade publications or other major media. The petitioner also submitted evidence indicating that her work has been cited to by other researchers in their publications. As previously discussed, the articles citing to 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 her work. The petitioner has not established that the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii) is indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the

evidence is indicative of his recognition beyond her own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. As previously discussed, the record contains no review requests from the editorial staff of *Genes & Development*, *Journal of Bacteriology*, and *FEMS Microbiology Letters* addressed directly to the petitioner. There is no documentary evidence establishing that the petitioner, rather than her supervisor [REDACTED] served as part of a formal judging process for the preceding journals. Even if the petitioner were to establish that she participated in reviewing articles for *Genes & Development*, *Journal of Bacteriology*, and *FEMS Microbiology Letters*, the petitioner's level and frequency of peer review is not commensurate with sustained national or international acclaim at the very top of the field of endeavor. The AAO notes that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has directly received and completed numerous independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal, the AAO cannot conclude that her level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field. For instance, with regard to her references' qualifications, the petitioner submitted documentation

[REDACTED]

The petitioner also submitted documentation indicating that she and [REDACTED] provided evaluation comments for three research publications for Faculty of 1000 Biology in 2009. However, even the petitioner's selection for those reviews resulted from her association with [REDACTED]. Thus, the submitted evidence is not indicative of the petitioner's recognition beyond her own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. Moreover, as previously discussed, the petitioner's "Associate Faculty" designation in Faculty of 1000 is less restrictive than the "Faculty" membership designation held by [REDACTED]. The petitioner has not established that her participation as an "Associate Faculty" evaluator for Faculty of 1000 Biology is indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of the field.

Regarding the documentation submitted for the categories of evidence at 8 C.F.R. §§ 204.5(h)(v) and (vi), the petitioner has documented her co-authorship of seven journal articles with [REDACTED] based on her research at the University of Oklahoma. The petitioner also submitted citation evidence indicating that some of their research articles are well-cited. The petitioner, however, has not established that her publication record and original research contributions set her apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..."

The AAO notes that the Department of Labor's Occupational Outlook Handbook (OOH), 2012-13 Edition, (accessed at www.bls.gov/oco on April 27, 2012 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://www.bls.gov/ooh/Education-Training-and-Library/Postsecondary-teachers.htm#tab-3>. The handbook states that faculty "must find a balance between teaching students and doing research and publishing their findings. This can be stressful, especially for beginning teachers seeking advancement . . ." Further, the doctoral programs training students for faculty positions require "a doctoral dissertation, which is a paper presenting original research in the student's field of study." See <http://www.bls.gov/ooh/Education-Training-and-Library/Postsecondary-teachers.htm#tab-4>. Moreover, the OOH states specifically with respect to microbiologists that a "solid record of published research is essential to get a permanent position in basic research, especially a permanent faculty position in a college or university." See <http://www.bls.gov/ooh/life-physical-and-social-science/microbiologists.htm#tab-4>. This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field. Finally, there is no documentary evidence showing that the petitioner has published any frequently cited research articles based on her work at WUSL. According to the letter of support from [REDACTED] the petitioner has worked at WUSL since April 2007. There is no citation evidence showing that any published findings resulting from the petitioner's research at WUSL are well cited. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as a researcher has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

That said, the AAO acknowledges the positive response in the field to the petitioner's research published with [REDACTED]. The director found that the petitioner has made original contributions of major significance to the field. The AAO is not persuaded, however, that the petitioner's graduate research contributions, presented in only a few well-received publications with her former Ph.D. advisor, rise to the level of sustained national or international acclaim in the context of her field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The evidence submitted by the petitioner does not establish that her temporary training positions as a graduate student and a postdoctoral researcher were leading or critical to the University of Oklahoma and WUSL, or otherwise commensurate with sustained national or international acclaim at the very top of her field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner has not established that her salary of \$36,996 equates to a high salary in relation to others in her field. The petitioner has not demonstrated that her salary places her among that small percentage who have risen to the very top of the field of endeavor. See *Matter of Price* at 954 (considering professional golfer's earnings versus other PGA Tour

golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The salary evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of the field.

On appeal, the petitioner states: "I have mastered scientific skills in multi-disciplinary fields such as Environmental Microbiology, Molecular Microbiology, Genetics, Cell Biology, and Biochemistry. Scientists with such combinations are extremely rare." The petitioner's appellate submission includes a December 22, 2008 letter from [REDACTED]

[REDACTED] stating:

While there are relatively few experts in the field of bioremediation, there are even fewer that have any expertise with anaerobic microorganisms. That is because the organisms involved are difficult to cultivate and specialized techniques are absolutely necessary. While I hesitate to hazard a guess, I would say that there are no more than about 200 individuals worldwide (about half in the U.S.) with comparable skills.

Assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. The issue of whether similarly trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a postdoctoral research associate, relies on association memberships that have not been shown to require outstanding achievements, published material which is not primarily about her or indicative of her acclaim in the field, a few instances of participation with [REDACTED] as peer reviewer and paper evaluator, the petitioner's co-authorship of seven journal articles with [REDACTED] citation records for her published articles, the affirmation of her colleagues that she is important to the laboratories where she has worked in temporary training roles as a student and a postdoctoral researcher, and the general praise of her references.

The AAO notes that many of the petitioner's references' credentials are far more impressive than those of the petitioner. For example, [REDACTED] states:

I joined the faculty of the [REDACTED] . . . and currently hold the position of [REDACTED]
[REDACTED] Since arriving at the [REDACTED] I have published over 120 refereed scientific articles and have been invited to numerous scientific symposia and international meetings. I have supported my research efforts by winning millions of dollars in grant support. . . . I have been an Editor for the leading interdisciplinary journal in both environmental science and engineering (*Environmental Science and*

Technology) for 20 years. I am a past member of the Committee on Environmental Microbiology for the ASM's Public and Scientific Affairs Board, I am the past multi-term [REDACTED] of the ASM and I have been an ASM Foundation Lecturer.

[REDACTED] states:

I am a [REDACTED] [REDACTED] I was a distinguished staff scientist in the [REDACTED] [REDACTED] I am a very successful scientist with more than 200 publications in scientific journals. Our studies on iron reducing bacteria from deep surface was highlighted by [REDACTED] and studies on isolating acidophilic methanotrophs was also highlighted by several newspapers in 1998. Both of these findings were published in *Science* in 1997 and 1998. . . . I chaired the 7th Conference on Small Genomes, [REDACTED] Department of Energy (DOE) [REDACTED] workshop "Application of Genomic Technology to Bioremediation," December 5-7 of 1999 in Washington D.C., the 9th International Conference on Microbial Genomes, Gatlinburg, TN, [REDACTED] 1, and the 11th International Conference on Microbial Genomes, [REDACTED] in Durham, NC. . . . Furthermore, I received an achievement award from [REDACTED] respectively. I became an [REDACTED] which is the best journal in the field of environmental microbiology. I am a Fellow of the American Academy of Microbiology, and a Fellow of American Association for the Advancement of Science.

[REDACTED] states:

I am a [REDACTED] [REDACTED] I have been an active principal investigator for more than 30 years. . . . I have been honored by being elected a AAAS Fellow and a Fellow of the American Academy of Microbiology, where I have also [REDACTED] I was Editor in Chief of the scholarly journal *Applied and Environmental Microbiology*. I have been a grant reviewer for NIH, DOE, USDA, and NSF on occasions and was a formal panel member of the NIH Microbial Physiology and Genetics for two terms, 1988-1992 and 1996-1998. . . . I have published over 85 peer-reviewed papers in well-respected journals and edited one book.

[REDACTED] states:

Currently I am serving as the [REDACTED] [REDACTED] Before taking the current position, I was a tenured associate professor in the department of botany and microbiology, [REDACTED] In addition, I served as a panel member of [REDACTED] and was an active

reviewer for more than 20 major international research journals on biology. I have published . . . in prestigious research journals such as *Cell*, *PNAS*, *Plant Cell*, *Plant Journal*, *Journal of Biological Chemistry*, *Developmental Cell*, and *Current Biology*, etc.

As previously mentioned, [REDACTED] is an [REDACTED]. The petitioner submitted [REDACTED] curriculum vitae indicating that she is a member of the Editorial Advisory Board for *Molecular Biology*, has served as a reviewer for eleven journals, and has completed an “average of 10 reviews per year.”

[REDACTED] states: “My current appointment at the [REDACTED] is at the Full professor level, which is the highest rank for a professor in the United States.” According to his curriculum vitae, [REDACTED] has authored more than two dozen published articles.

[REDACTED] states:

I . . . joined the faculty at [REDACTED] where I am currently an [REDACTED]. . . . I am currently the principal investigator on numerous grants and contracts that exceed 2 million dollars in funding. I am currently serving on the editorial board of the *Journal of Microbiological Methods*, one of the top journals in the field, and acting as an ad hoc reviewer for numerous scientific and engineering journals.

While the petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought, it appears that the very top of her field of endeavor is far above the level she has attained. In this case, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a research scientist, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

III. Conclusion

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

Review of the record, however, does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In 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.