

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

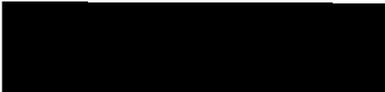


U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B2

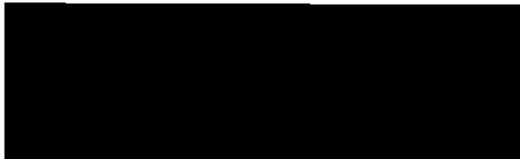
DATE: Office: TEXAS SERVICE CENTER FILE: 

MAY 14 2012

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 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 with the field office or service center that originally decided your case by filing a 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 employment-based immigrant visa petition was denied by the Director, Texas 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, counsel asserts that that petitioner has "received sustained international acclaim and recognition for her achievements" and that the submitted documentation demonstrates she is one of the small percentage who have risen to the very top of her 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 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.

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

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. *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,"

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).

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 "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 May 23, 2010, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner earned her Ph.D. in Genetics (2006) under the [REDACTED] University, China. At the time of filing, the petitioner was working as a postdoctoral associate in the Department of Epidemiology and Public Health (DEPH) at Yale University School of Medicine (YUSM) under the supervision of [REDACTED]

[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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In a letter accompanying the petition, counsel asserts that the petitioner received a "Li Foundation Postdoctoral Fellowship," two "third grade Student Award Scholarships" from Fudan University, a "Shanghai Outstanding Graduate Student" award, and a "first grade Student Award Scholarship" from Shanghai University, but the petitioner failed to submit documentary evidence of her receipt of the awards. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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). Further, the petitioner did not submit evidence of the national or international *recognition* of her awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's

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

awards were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

The director requested further evidence pertaining to this regulatory criterion, but the petitioner's response to the director's request for evidence (RFE) did not address the deficiencies identified by the director. Therefore, the director found that the petitioner had failed to demonstrate her receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. 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 court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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 evidence of her membership in the American Society for Microbiology (ASM) and the American Society of Tropical Medicine and Hygiene (ASTMH), but she failed to submit documentary evidence (such as membership bylaws or rules of admission) showing that they require outstanding achievements of their members, as judged by recognized national or international experts in her field.

The petitioner submitted e-mail correspondence dated January 26, 2010 thanking the petitioner for her "interest in membership to Sigma Xi" through the society's Quinnipiac chapter. The e-mail correspondence requests that the petitioner provide her curriculum vitae, birth date, mailing address, telephone number, and the name of the principal investigator in her laboratory. There is no evidence documenting the petitioner's actual admission to membership in Sigma Xi. 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 submitted materials about Sigma Xi

indicate that the society invites to full membership those who have “shown noteworthy achievement as an original investigator in a field of pure or applied science.” A noteworthy achievement is not necessarily an outstanding achievement. The record reveals that Sigma Xi does not take a particularly strict view of noteworthy achievements. According to the material submitted by the petitioner, these achievements “must be evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation.” The AAO cannot conclude that primary authorship of two papers in an occupation where a “solid record of published research is essential to get a permanent position in basic research” constitutes outstanding achievements.⁴

The director found that the petitioner failed to submit documentary evidence of her membership in associations requiring outstanding achievements of their members, as judged by recognized national or international experts in the field. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The AAO withdraws the director’s finding that the petitioner meets this regulatory criterion. 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.⁵

The petitioner submitted an August 2009 article by [REDACTED] posted in the “News” section of the school’s website and [REDACTED]. A Host Protein May Provide the Answer.” The article, which only briefly mentions the petitioner in passing as a member of [REDACTED] research team, is not about the petitioner. The plain

⁴ With respect to Microbiologists, the Department of Labor’s Occupational Outlook Handbook, 2012-13 Edition, states: “Postdoctoral positions typically offer the opportunity to publish research findings. 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>, accessed on May 2, 2012, copy incorporated into the record of proceedings.

⁵ 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.

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). Further, there is no documentary evidence (such as online readership information) showing that the Yale School of Public Health’s website qualifies as a form of major media. The AAO is not persuaded that a news item written by the Director of Communications at the petitioner’s research institution (which is not the result of independent media reportage) meets the elements of this regulatory criterion.

The petitioner submitted two “Faculty Comments” posted on the website of “Faculty of 1000 Biology” relating to the petitioner and [REDACTED] article entitled [REDACTED] and tsetse peptidoglycan recognition protein (PGRP-LB) influence trypanosome transmission.” The posted comments are not published material about the petitioner as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Instead, they are post-publication peer review evaluations of the article she coauthored with [REDACTED]. According to the plain language of this regulatory criterion, the published material must be “about the alien . . . relating to the alien’s work.” Compare 8 C.F.R. § 204.5(i)(3)(i)(C), which requires evidence “about the alien’s work.” It cannot be credibly asserted that the submitted Faculty of 1000 comments are “about” the petitioner. The petitioner also submitted information about Faculty of 1000 from *Wikipedia*, an online encyclopedia. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. The submitted documentation also included information about Faculty of 1000 originating from its own website. The self-serving nature of this material is not sufficient to demonstrate that the Faculty of 1000 Biology website is a form of major media. USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). There is no documentary evidence showing that the Faculty of 1000 Biology website qualifies as a form of major media.

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on May 2, 2012, copy incorporated into the record of proceeding.

The petitioner submitted citation evidence indicating that articles she coauthored with her superior [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. As previously discussed, 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." 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.

The petitioner submitted a February 2010 article printed from NewsRx.com entitled [REDACTED] from [the petitioner] and colleagues yield new information about life sciences," but the author of the article was not specifically identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted a brochure for NewsRx providing information about the company's first 25 years of existence, but the self-serving nature of the company brochure is not sufficient to demonstrate that NewsRx.com qualifies as a form of major media. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009). There is no evidence showing the online readership for NewsRx.com relative to other websites to demonstrate that the submitted article was in a form of major media. Furthermore, even if the petitioner were to submit supporting documentary evidence showing that the article from NewsRx.com meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires material about the alien in "professional or major trade publications or other major media" in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapshot.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, published material about the petitioner limited to only one major medium does not meet the plain language requirements of this regulatory criterion.

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.

The petitioner submitted a February 1, 2010 e-mail message from an Associate Editor for *Molecular Immunology* requesting that the petitioner [REDACTED]

In response to the director's RFE, the petitioner submitted an April 30, 2010 e-mail message thanking the petitioner for completing her review of the preceding manuscript.

The petitioner's response to the director's RFE included an October 8, 2010 letter from the Editor-in-Chief of *Immunobiology* stating that the petitioner "was invited to be a peer-reviewer" for the journal. The petitioner also submitted a November 8, 2010 letter from the Editor-in-Chief of *Journal of Insect Science* stating that he "invited her to review manuscripts for the journal." The petitioner's response also included a September 11, 2010 letter from the Science Navigation Group Managing Director of Faculty of 1000 stating: "[The petitioner] was appointed at the request of

as an Associate Faculty Member to assist her in evaluating the scientific literature for Faculty of 1000

The limited information provided in the preceding letters does not identify the specific articles reviewed by the petitioner, the dates she completed her manuscript reviews, or the names of the authors. Merely submitting letters claiming that the petitioner was invited to review articles without specifying the work she actually judged is insufficient to establish eligibility for this regulatory criterion. As previously discussed, 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. at 165. Moreover, 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). In this instance, there is no documentary evidence demonstrating that the petitioner had reviewed articles for *Immunobiology*, *Journal of Insect Science*, or Faculty of 1000 at the time of filing the petition on May 23, 2010. 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 reviewed by the petitioner after May 23, 2010 in this proceeding.

The submitted documentation demonstrates that the petitioner peer-reviewed a single manuscript for *Molecular Immunology* 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 research under the guidance of

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.

⁷ The AAO notes that the petitioner's "Associate Faculty" designation in Faculty of 1000 is less restrictive than the "Faculty" membership designation held by

The petitioner has documented her co-authorship of approximately twenty journal articles with her superiors 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 Fudan University and her postdoctoral research in [REDACTED]. 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 Fudan University or YUSM. 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 Fudan University was that of a graduate student. Moreover, the petitioner's postdoctoral appointment at YUSM is designed to provide specialized research experience and training in her field of endeavor.⁸ 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 [REDACTED] stating that the petitioner's "current salary is \$45,960." 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.

⁸ 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 May 2, 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)(i) – (iv), (viii) and (ix).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the documentation submitted by the petitioner does not rise to the level of nationally or internationally recognized prizes or awards for excellence in the field. Moreover, the petitioner has failed to establish her receipt of "prizes or awards" that 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 her field. Regarding the petitioner's student awards, scholarships, and fellowship, the AAO finds that they fail to demonstrate she "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that receiving awards limited to students should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

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, the ASTMH, and Sigma Xi require outstanding achievements of their members, as judged by recognized national or international experts in her field. 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), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not identifying the author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. 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 her recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, the petitioner submitted evidence demonstrating that she peer-reviewed a single manuscript for *Molecular Immunology* as of the petition's filing date. The petitioner has not established that her level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of her 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, [REDACTED]

With regard to 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 approximately twenty articles with her superiors [REDACTED]. 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 May 2, 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.

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 and postdoctoral research contributions, presented in some well-received publications with her more experienced supervisors, rise to the level of sustained national or international acclaim in the context of her field.

Regarding 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 Fudan University and YUSM, 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 \$45,960 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.

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 associate, relies on association memberships that have not been shown to require outstanding achievements, online articles and review comments about her work with an undocumented level of readership, a single instance of peer review for *Molecular Immunology* as of the petition's filing date, her co-authorship of approximately twenty articles with her superiors [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 am a professor at Yale University, where I'm [REDACTED]. I am also the director of [REDACTED] Innovative Vector Control Program. I'm also [REDACTED] 2008-2012.

In addition, [REDACTED] has published more than eighty articles, book chapters, and reviews. [REDACTED] has also served as an [REDACTED] and [REDACTED].

[REDACTED] states: "I am a full professor at the Institute of Genetics at Fudan University, China. I have published more than 80 papers and book chapters in the field of cell biology, plant genetics and have supervised more than 30 Ph.D. students."

[REDACTED] Scientific Review, National Institutes of Health, states that he previously worked as an Associate Professor at Yale University and has authored "more than 50 peer-reviewed articles and book chapters."

[REDACTED] states: "I am a tenured [REDACTED]. . . I have published 46 articles in my field." [REDACTED] is also an [REDACTED]

[REDACTED]

██████████ and Public Health at Yale University. ██████████
of Infectious Diseases at Howard Hughes Medical Institute.

██████████ who has authored more than eighty peer-reviewed publications, states:

I am a ██████████ a research institute of the ██████████
██████████. My laboratory uses the fruit fly as a
model genetic system doing cutting-edge research in the field of innate immunity and
host-pathogen interactions. I have published extensively in top-quality peer-reviewed
journals. I have made major contributions to elucidating the molecular mechanism of
innate immunity.

██████████ states: “I am full professor of Department of Education and Collaboration,
Research Center for Zoonosis Control, Hokkaido University. . . . I have published more than a
hundred papers”

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).

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.