



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 13 2013

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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on September 13, 2012. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on October 10, 2012.<sup>1</sup> The appeal will be dismissed.

According to part 6 of the petition and counsel's letter dated June 15, 2012, initially filed in support of the petition, the petitioner seeks classification as an "alien of extraordinary ability" as a "post-doctoral research associate" in the field of neurobiology, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner failed to establish his sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, counsel submits an eight-page brief and the following documents: (1) a [REDACTED] document of two charts entitled [REDACTED]; (2) a 2011 online printout entitled [REDACTED] and (3) a two-page Google scholar printout relating to citation frequency of the petitioner's articles. The petitioner previously submitted all three documents. For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not satisfied at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3) with relevant, probative evidence, and in the final merits determination, the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and has not demonstrated his sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner's appeal.

## I. THE 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):

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<sup>1</sup> On appeal, counsel filed two Notices of Appeal or Motion, Forms I-290B. The United States Postal Service (USPS) online printouts indicate that USPS delivered the first Form I-290B to United States Citizenship and Immigration Services (USCIS) on Monday, October 1, 2012; and delivered the second Form I-290B to USCIS on Wednesday, October 10, 2012. This decision relates to the second Form I-290B, LIN 13 900 48512.

(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.

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

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

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

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

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<sup>2</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has not shown that he meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, in the final merits determination, the petitioner has not shown that he is one of a small percentage who have risen to the very top of the field or that he has sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

## II. ANALYSIS

### A. Evidentiary Criteria<sup>3</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish his sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of his receipt a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award, at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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

In his September 13, 2012 decision, the director concluded that the petitioner failed to meet this criterion. On appeal, counsel states in his brief that “[i]t should be noted that the petitioner did win [sic] three categories [of evidence], even though more were claimed, and the categories won [sic] will not be reviewed. But other categories should also have been won [sic], and these additional categories could have had impact on the [director’s] analysis in Part II [final merits determination].” On appeal, counsel does not specifically challenge the director’s adverse finding as relating to this criterion. See *Desravines v. United States Att’y Gen.*, No. 08-14861, 343 F. App’x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal by a *pro se* litigant are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

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<sup>3</sup> The petitioner does not claim that it has satisfied the regulatory categories of evidence not discussed in this decision.

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*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.* 8 C.F.R. § 204.5(h)(3)(ii).

In his September 13, 2012 decision, the director concluded that the petitioner failed to meet this criterion. On appeal, counsel does not specifically challenge the director's adverse finding as relating to this criterion. See *Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. See *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

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

In his September 13, 2012 decision, the director concluded that the petitioner met this criterion. Based on the evidence in the record, the AAO affirms the director's finding. Accordingly, the petitioner has submitted evidence of his 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 has satisfied this criterion. See 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.* 8 C.F.R. § 204.5(h)(3)(v).

In his September 13, 2012 decision, the director concluded that the petitioner met this criterion. The AAO disagrees. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The evidence in the record shows that while working with [REDACTED] Ph.D., Distinguished Professor and Chairman at the [REDACTED] Department of Pharmacology, the petitioner's research, focusing on epilepsy, resulted in original discoveries. A number of his reference letters attest to the originality of his discoveries. For example, according to a March 2, 2012 letter from [REDACTED], Assistant Professor at the [REDACTED], Department of Anatomy and Neurobiology:

[The petitioner] was essential in characterizing and establishing the only known [REDACTED] in which [REDACTED] could be reliably induced . . . [The petitioner] found that [REDACTED]

[REDACTED]. [The petitioner] further characterized which [REDACTED]. This suggests a completely novel method for [REDACTED]

According to a March 8, 2012 letter from [REDACTED]:

[A]s a part of his graduate research[, the petitioner] has successfully characterized *in* [REDACTED] . . . that mediate epileptogenesis in genetically [REDACTED] [REDACTED] could precipitously and permanently result in [REDACTED], and also showed that inhibition of this enzyme could block the [REDACTED] . . . . In addition to these studies, [the petitioner] developed a novel [REDACTED]

Although the evidence establishes the originality of the petitioner's work in the area of epilepsy, pursuant to the discussion below, the evidence fails to show that the work constitutes contributions of major significance in the field of neurobiology. First, evidence that other scientists cited and built upon the petitioner's research is insufficient to demonstrate that the petitioner's work constitutes contributions of major significance in the field. Although the petitioner has provided specific examples of other scientists' reliance on his research findings, the petitioner has not shown that these examples demonstrate that his work and findings have been widely accepted and adopted in the field, such that they constitute contributions of major significance in the field of neurobiology as a whole.

Professor [REDACTED] continues that he and the petitioner have "published [ ] important papers on this [REDACTED] which have been well received by the medical and neuroscience fields." More specifically, according to Professor [REDACTED] the petitioner's "important findings have recently been clinically verified by Dr. [REDACTED] group at the [REDACTED] . . . ." According to a March 23, 2012 letter from Dr. [REDACTED] a professor at the [REDACTED] Department of Neurology, the petitioner's "fundamental research in animal models of epilepsy was the basis of some of the work that [Professor [REDACTED] has] subsequently done in patients with epilepsy . . . ." According to a July 30, 2012 letter from [REDACTED] M.D., FRCPC, Associate Professor of Clinical Neurology also at the [REDACTED] "[a]s a result of [the petitioner]'s research, [Professor [REDACTED]] was able to establish that seizure-associated respiratory dysfunction was less severe in patients taking SSRI [selective serotonin reuptake inhibitor] than in those not taking these medications."

According to a May 23, 2012 letter from [REDACTED] M.D., FRCPC, Associate Professor at the [REDACTED] Department of Pediatrics, Division of Neurology, the petitioner's work "has vast clinical applications and has informed the work of many other scientists." Her only example, however, is that she personally has referenced his work. Dr. [REDACTED] provides the website information for the citing article, thereby incorporating that article into the record of proceeding. In this article, a review article, Dr. [REDACTED] merely references the petitioner's work in a single sentence among the 53 studies she references. She does not suggest in this article that she has applied his work in her own research. According to an August 2, 2012 letter from [REDACTED] M.D., Ph.D., Professor of Neurology at the [REDACTED] Department of Functional Neurology and Epileptology, "[b]ased on [the petitioner's] work, [Professor [REDACTED]] group has designed and launched a pionnered [sic]

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randomised [sic] controlled trial aiming at testing the potential of fluoxetine to prevent ictal/post-ictal hypoxemia in patients with refractory epilepsy.”

Although the evidence, including the abovementioned reference letters, shows that the petitioner’s work relating to epilepsy has affected the work of scientists in at least two institutions, and that these scientists have found the petitioner’s research findings to be “very important” or “well-received,” the evidence is insufficient to show that the petitioner’s work constitutes contributions of “major significance” in the entire field of neurobiology, as required under the plain language of the criterion. While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

Second, much of the evidence suggests that the petitioner’s work and researching findings merely has the potential of becoming significant. For example, according to a March 5, 2012 letter from [REDACTED], Ph.D., Associate Professor of Pharmacology and Neuroscience at the [REDACTED] Department of Pharmacology and Neuroscience, [REDACTED] “[the petitioner]’s findings are *very promising* and indicate that Prozac (fluoxetine), a commonly prescribed anti-depressant medicine, *could* prevent sudden death. This discovery by [the petitioner] *can* save lives of many epileptic patients.” (Emphasis added.) [REDACTED] M.D., Professor of Neurology at [REDACTED] and former President of the [REDACTED] predicted in his April 13, 2012 letter, that the petitioner’s work “has identified a *potential* safe and effective way to prevent . . . [REDACTED]’ his work “holds the *potential* for saving tens of thousands of lives in this country and multiples of that worldwide,” and his work “[is] the *most promising approach* to [REDACTED] solution.” (Emphasis added.)

[REDACTED], M.D., Professor of Neurology at the [REDACTED] and Vice President of [REDACTED], stated in his April 6, 2012 letter that the petitioner’s work “has opened a window that *could* lead to the prevention of the sudden death” and that “further studies by [the petitioner] and other colleagues *may* lead to the use of a readily available medication to reduce mortality in persons with epilepsy.” (Emphasis added.) In his April 23, 2012 letter, [REDACTED] M.D., Ph.D., Director of Adult Epilepsy and the EEG Laboratory and Medical Director of the [REDACTED]

[REDACTED] stated that the petitioner “discover[ed] the only known drug to date that *may* help avert . . . [REDACTED] (Emphasis added.) According to a July 18, 2012 letter from [REDACTED] M.B., Ch.B., M.D., FRCP, Consultant Neurologist at [REDACTED] and [REDACTED] the petitioner’s work relating to epilepsy “has given rise to hypotheses which can be tested in the clinical setting *which may result* in evidence-based strategies for the prevention of sudden death in epilepsy in humans.” (Emphasis added.) Similarly, Professor [REDACTED] predicted that “[i]f fluoxetine proves to be beneficial in improving ictal respiratory function without exacerbating seizures, this *would* represent the first *potential* therapeutic intervention to reduce the risk of [REDACTED] in

patients living with epilepsy.” (Emphasis added.) Speculations and predictions of possible significance in the future are insufficient to show that the petitioner has already made contributions of major significance in the field. The plain language of the criterion requires the petitioner to show that he has already made contributions of major significance. As such, speculations of the potential importance of his work and research findings do not meet the criterion.

Third, a February 2012 press release posted on [REDACTED] press release’s webpage fails to establish that the petitioner’s work in epilepsy constitutes contributions of major significance in the field of neurobiology. A disclaimer at the end of the release states that [REDACTED] is not responsible for the accuracy of the news releases posted by contributing institutions. In his April 8, 2012 letter, [REDACTED], M.D., Ph.D., Professor and Head at the [REDACTED] Department of Neurology, stated that “[i]n light of the clinical significance of prophylactic potential of chronic Prozac treatment in the [REDACTED] mouse model of [REDACTED] published recently in the journal [REDACTED] in which [the petitioner] played an instrumental role, the editor initiated a press release, rare for a young scientist.” The February 2012 press release relates to the article [REDACTED]

[REDACTED]” In it, Professor [REDACTED] stated that “Dr. [REDACTED] and colleagues have made a very important observation”; Professor [REDACTED], stated that “[t]his paper is a major advance”; and Professor [REDACTED] stated that “[t]he findings in this study are very important.” The petitioner, however, has failed to demonstrate that his work and research findings, which have been categorized in the press release from the journal publishing the work as “a very important observation,” “major advance” and “very important,” constitute contributions of “major significance” in the field of neurobiology as a whole. Indeed, in the press release, Professor [REDACTED] failed to state that the findings already constitute contributions of “major significance.” Rather, he speculated the “studies along this line *may* eventually lead to the use of currently available medicines in persons with poorly controlled seizures to reduce their risk for [REDACTED] (Emphasis added.) Moreover, a contribution of major significance is apparent from its ultimate impact upon dissemination, not the promise at the time of release.

Fourth, evidence that the petitioner has published articles is indicative of the originality of his work, but not its impact. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.<sup>4</sup> The record also contains evidence that the petitioner’s articles have been cited by other scientists and that he has given presentations relating to his work in epilepsy, but this evidence is insufficient to show that his work constitutes contributions of major significance in the field of neurobiology as a whole. According to Professor [REDACTED], the petitioner’s “findings were published in widely read and prestigious journals in [REDACTED]” The record also contains evidence relating to (1) a November 2011 [REDACTED] conference presentation entitled [REDACTED]

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<sup>4</sup> Publication and presentations are not sufficient evidence under the regulation at 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

\_\_\_\_\_” showing that the petitioner was one of three presenters; (2) a November \_\_\_\_\_ conference presentation entitled \_\_\_\_\_” showing that the petitioner was one of four presenters; and (3) a \_\_\_\_\_ online printout showing that, at the time of filing, the petitioner’s articles had been individually cited mostly minimally, with one article cited moderately and one well cited. The evidence – including evidence that a few of the petitioner’s articles have been cited above the average frequency of citations – does not show that scientists in the field of neurobiology have widely accepted the petitioner’s research findings or that the field of neurobiology has been notably impacted due to the petitioner’s findings, publications or presentations.

Furthermore, although in response to the director’s request for evidence (RFE), the petitioner provided evidence relating to his presentation at the \_\_\_\_\_ the conference was held in August 2012, after the petitioner filed the petition on June 26, 2012. This evidence will not be considered, because it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Fifth, a \_\_\_\_\_ article entitled \_\_\_\_\_’ written by \_\_\_\_\_ Ph.D., Interim \_\_\_\_\_, and \_\_\_\_\_ at the \_\_\_\_\_, which is a review of the petitioner’s 2011 \_\_\_\_\_ article ‘\_\_\_\_\_’ fails to establish that the petitioner’s work in epilepsy constitutes contributions of major significance in the field of neurobiology. Specifically, the petitioner has not shown that one review article opining that his work “may” represent a “very feasible approach,” but acknowledging that “[m]ore safety and feasibility studies are needed” is sufficient to demonstrate that this work already represents a contribution of major significance in the field of neurobiology as a whole, as required by the plain language of the criterion.

In addition, the evidence in the record fails to show that the petitioner’s current research conducted in Professor \_\_\_\_\_ laboratory meets this criterion. The record includes evidence of originality of the petitioner’s current work – for example, Professor \_\_\_\_\_ stated that the petitioner’s current work “provides novel and critical insights into the genetic origins of respiratory rhythm generating brainstem neuronal networks.” The record lacks, however, evidence showing that the original work and research findings constitute contributions of major significance in the field of neurobiology. For example, Professor \_\_\_\_\_ stated in his March 2, 2012 letter, “[u]sing cutting edge genetic and physiological tools, [the petitioner] is identifying the connected sets of neurons that are responsible for the complex behaviors of breathing.” Professor \_\_\_\_\_ then predicted, “[t]hese experiments *will have* fundamental impact on how we diagnose, treat, and understand diseases of breathing in humans.” (Emphasis added.) He further speculated that the petitioner’s work “*is bound to* have profound impact on [the] understanding of breathing” and his work “*will* profoundly affect how [scientists] look at disorders of breathing.” (Emphasis added.) Similarly, according to an April 23, 2012 letter from Professor \_\_\_\_\_,

the petitioner's "continued efforts [relating to breathing] will offer new insights into both aspects of developmental neuroscience and the physiology of breathing behaviors, and may [] one day benefit the treatment of diseases of these specific functions and pathways." (Emphasis added.) The content of the reference letters in the record, including those not specifically mentioned above, does not support the claim that the petitioner has already made contributions of major significance in his current work relating to breathing. Rather, the reference letters reveal that his work has potential value to the field. The plain language of the criterion requires a showing that the petitioner has already made contributions of major significance. As such, predictions or speculations of the potential importance of the petitioner's research do not meet the criterion.

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

Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient to meet the criterion.<sup>5</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from references or experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998).

The reference letters in the record, including those not specifically mentioned above, primarily contain speculations of future impact and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions already rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at \*1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F.

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<sup>5</sup> In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

Supp. 9, 17 (D.C. Dist. 1990). In addition, the petitioner has failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Accordingly, the petitioner has not submitted sufficient evidence showing that he has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of neurobiology. The petitioner has not satisfied this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

In his September 13, 2012 decision, the director concluded that the petitioner has satisfied this criterion. Based on the evidence in the record, the AAO affirms the director's finding. Accordingly, the petitioner has submitted evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has satisfied this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

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

In his September 13, 2012 decision, the director concluded that the petitioner failed to meet this criterion. On appeal, counsel challenges the director's adverse finding, stating that the evidence "unequivocally establishes [the petitioner's] critical role in the trailblazing discoveries which, notably include the only currently known [redacted] and possibly also in SIDS [sudden infant death syndrome]." Relying primarily on reference letters in the record, counsel concludes that "[v]ery clearly the critical role [the petitioner] played in his lab has been understood, and the reasons why he was considered critical have been clearly stated." Although the record includes evidence relating to the petitioner's role in specific research studies, it lacks evidence showing that the petitioner has performed in a leading or critical role for any organization or establishment that has a distinguished reputation, as required under the plain language of the criterion.

Specifically, according to Professor [redacted] letter, the petitioner "was a critical member of a group that showed that breathing is generated by neurons within a small region of the brain that express a specific developmental gene, Dbx1." The letter further states that the petitioner was "a [sic] integral part of a collaboration between [the] [redacted] and the [redacted] [redacted] to test the role of a very small population of neurons thought to sense CO2." The letter, however, fails to establish the petitioner's role, let alone a leading or critical role, in an organization or establishment. Rather, the letter discusses the petitioner's role in a group of scientists who were involved in Professor [redacted] laboratory, part of the [redacted], which is an organization and establishment that has an unspecified number of laboratories and departments. The petitioner's position within this university was, at the time of filing, as a post-doctoral research associate.

Similarly, although Professor [REDACTED] stated in his August 2, 2012 letter that the petitioner “lead [sic] and played a critical role in several studies over the past decade that have helped identify and characterize the acute and chronic [REDACTED] that closely resemble human [REDACTED] the letter fails to identify in what organization or establishment the petitioner has performed a leading or critical role. Rather, the letter discusses the petitioner’s role in “several studies.”

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation. This requirement is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the petitioner had performed in a leading or critical role for the [REDACTED] the petitioner failed to meet this criterion because he failed to show that he performed in a similar role for a second organization or establishment that has a distinguished reputation.

Accordingly, the petitioner has not submitted sufficient evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not satisfied this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

#### B. Final Merits Determination

Based on the evidence in the record, the petitioner has not submitted the requisite evidence under at least three evidentiary categories. Although the petitioner has submitted sufficient evidence regarding the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the petitioner satisfied no other criteria. Notwithstanding this finding, in accordance with the *Kazarian* opinion, given that the director’s sole basis of denial was a final merits determination, the AAO will also conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) his “level of expertise indicating that [he] is one of [a] small percentage who have risen to the very top of the field of endeavor,” and (2) that he “has sustained national or international acclaim and that his [ ] achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

At the outset, the AAO acknowledges several affirmations by references that the petitioner has a unique and multidisciplinary educational background that would be an asset to the United States. As relating to this petition, however, the issue is not whether the petitioner has a background that demonstrates his potential to benefit the United States but whether he already enjoys national or international acclaim in the field of neurobiology.

With regard to the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), as discussed above, the petitioner has not satisfied this criterion. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. Specifically, the director concluded in his September 13, 2012 decision that the petitioner failed to

submit sufficient evidence to show that any of his awards or prizes constituted a nationally or internationally recognized prize or award of excellence in the field of neurobiology. On appeal, the petitioner has not challenged this adverse finding. *See Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117; *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. Thus, the petitioner's awards or prizes are not indicative of national or international acclaim or status within the small percentage at the top of the field.

With regard to the membership in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), as discussed above, the petitioner has not satisfied this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Specifically, the director concluded in his September 13, 2012 decision that the petitioner failed to submit sufficient evidence to show that the associations, in which the petitioner claimed membership, required outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. On appeal, the petitioner has not challenged this adverse finding. *See Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117; *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. Thus, the petitioner's membership in [REDACTED] and [REDACTED] is not indicative of national or international acclaim or status within the small percentage at the top of the field.

With regard to the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), although the petitioner meets this criterion, he fails to show his eligibility for the employment classification sought. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. On appeal, counsel asserts that the very inclusion of this criterion reveals that any evidence satisfying it is evidence of national or international acclaim. This assertion is not in accordance with *Kazarian*, 596 F.3d at 1121-22. Rather, the court explicitly stated that the concerns the AAO had raised, while not relevant to whether or not the petitioner in that case satisfied the criterion, were potentially relevant within the context of a final merits determination. Thus, the court recognized that evidence satisfying a given criterion might not, in fact, be indicative of national or international acclaim and may be evaluated as such in the final merits determination. First, the only evidence of judging as of the date of filing is a letter from [REDACTED], Editor-in-Chief of [REDACTED] confirming that the petitioner had reviewed two manuscripts for that journal. The additional evidence, an August 23, 2012 email from [REDACTED], M.D., Ph.D., Associate Editor of [REDACTED], states that the petitioner reviewed a manuscript. It is, however, unclear from the email or any other evidence in the record that the petitioner completed his review on or before June 26, 2012, the date he filed his petition. As such, this document has no evidentiary value, because the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Second, while the petitioner's evidence documents that he reviewed two manuscripts as of the date of filing, it appears that many researchers, including his references, serve as reviewers for papers and journals. Scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent

requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the petitioner cannot establish that his judging experience is indicative of or consistent with national or international recognition. Notably, Professor [REDACTED] is the Editor-in-Chief of [REDACTED]. The evidence shows that the level of the petitioner's participation as a judge does not match some of his references.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the petitioner has not satisfied this criterion. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. Ultimately, the content of the letters submitted under this criterion not only fail to demonstrate that the petitioner has already made contributions of major significance in the field of neurobiology, they also mostly speculate as to his future potential acclaim. In addition, as supporting evidence of his contributions, the petitioner has provided a February 2012 press release from [REDACTED]. This document, along with other evidence, shows that although the petitioner participated in the research study that resulted in the publication of [REDACTED]

Professor [REDACTED], not the petitioner, led the research study. Specifically, although in the press release, Professor [REDACTED]'s name was mentioned several times in quotes from experts in the field, other than listing the petitioner's name as one of three authors of the article, the press release does not specifically mention the petitioner nor his specific contributions as relating to the article or research study.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), while the AAO affirms the director's findings that the petitioner met this criterion, the evidence does not establish the petitioner's eligibility for the employment classification sought. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. The record shows that the petitioner has authored a number of articles, including (1) an article entitled [REDACTED] and (2) an article entitled [REDACTED]

[REDACTED] The petitioner, however, has not shown that either of these two articles has been published in a professional or major trade publication or other major media. See 8 C.F.R. § 204.5(h)(3)(vi). Indeed, these articles appear to be unpublished manuscripts.

According to the record and the petitioner's curriculum vitae, submitted in response to the director's RFE, the petitioner coauthored 10 articles and one book chapter. Based on the petitioner's evidence, however, it appears that many researchers, including his references, author scholarly articles. According to Professor [REDACTED], his work "has led to 30 full publications in referred journals and books." According to Professor [REDACTED], he has "over 50 publications . . . in prestigious journals including [REDACTED]

[REDACTED]" According to Professor [REDACTED] he has "an extensive publication record (over 150 articles) which includes several highly cited articles in high profile journals such as [REDACTED]

According to Professor [REDACTED], he has “authored over 90 publications and 6 book chapters.” According to Professor [REDACTED], he has “edited several books and published over 140 pubmed referenced scientific papers.” The evidence shows that the level of the petitioner’s publication of scholarly articles does not match many his references.

Finally, the mere fact that the petitioner’s citation rate may be above average, does not suggest that his publication record places him within the small percentage at the top of his field.

With regard to the leading or critical role for organizations or establishments criterion under 8 C.F.R. § 204.5(h)(3)(viii), as discussed above, the petitioner has not satisfied this criterion. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. The record lacks evidence that the petitioner has performed any role, let alone a leading or critical role, for any organization or establishment that has a distinguished reputation. Evidence relating to the petitioner’s involvement in particular research studies does not qualify as performing any role for the organization or establishment that sponsored or supported the studies. The petitioner’s position at the time of filing was as a post-doctoral research associate. Notably, the record contains letters from department chairs and the [REDACTED]. In short, the petitioner has not shown that his role in research studies is indicative of his being within the small percentage at the top of the field of neurobiology.

Ultimately, the record does not support counsel’s claim on appeal that the petitioner is an alien of extraordinary ability in the field of neurobiology. Even in the aggregate, the evidence 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 post-doctoral research associate, relies on his volunteer participation in the widespread review process, his publication record that has garnered above-average citations, and the praise of his peers. While this may distinguish him from other post-doctoral research associates, the AAO will not narrow his field to others with his level of training and experience. From a review of the record as a whole, it appears that the highest level of the petitioner’s field is far above the level he has attained.

### III. CONCLUSION

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

A review of the evidence in the aggregate, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field of neurobiology. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 U.S.C. § 1361. Here, that burden has not been met.

(b)(6)

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**ORDER:** The appeal, as relating to LIN 13 900 48512, is dismissed.