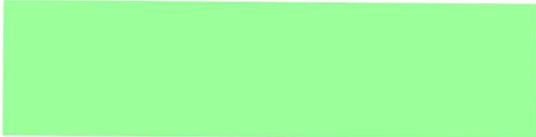




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

JUN 19 2013

Office: NEBRASKA SERVICE CENTER

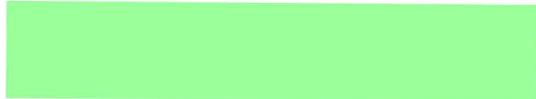
FILE:



IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. The director also determined that the petitioner had failed to demonstrate that he is among that small percentage who have risen to the very top of the field of endeavor.

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. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(v), (vi), and (vii), but that the petitioner had failed to demonstrate sustained national or international acclaim at the very top of the field.

On appeal, the petitioner asserts that he is "one of the small percentage who has risen to the very top of the field of endeavor."

For the reasons discussed below, the AAO will uphold the director's determination that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, while the AAO affirms the director's finding that the petitioner has submitted qualifying evidence that meets the plain language of the authorship of scholarly articles criterion pursuant to 8 C.F.R. § 204.5(h)(3)(vi), the AAO withdraws the director's findings that the petitioner's evidence meets the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) and the display of work at artistic exhibitions or showcases criterion at 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the petitioner has failed to demonstrate that he satisfies the antecedent regulatory requirement of three types of evidence. Further, as will be explained in the AAO's final merits determination, the evidence that technically qualifies under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) reflects accomplishments in a university setting where publication is expected of a Ph.D. student and postdoctoral research associate. Moreover, the evidence submitted by the petitioner for the scholarly articles criterion does not rise to a level of accomplishment commensurate with the most experienced and renowned members of the field. 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.¹ 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, and publication records only reinforce the AAO's conclusion that the top of the petitioner's field is far higher than the level he 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.*; 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, internationally 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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

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).

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 April 5, 2011, seeks to classify the petitioner as an alien with extraordinary ability as a medicinal research scientist. The petitioner received a Master of Science degree in Chemistry from the [REDACTED] in August 1999 and a Ph.D. in Chemistry from the [REDACTED] in December 2007. At the time of filing the petition, the petitioner was working as a Senior Scientist and Manager with [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.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. 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) (plaintiff's claims found to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he 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.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. 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 he 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.

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, the AAO has not considered whether the petitioner meets the remaining categories of evidence.

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner submitted copies of various research articles that cite to his work. Articles which cite to the petitioner's work are primarily about the authors' own work or recent trends in the field, and are not about the petitioner or even his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that briefly mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally 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 or a character within a show are not about the performer). It cannot be credibly asserted that the submitted articles are "about" the petitioner. The submitted articles do not discuss the petitioner's standing in the field or any other information so as to be considered published material about him as required by this regulatory criterion. Moreover, the AAO notes that the submitted articles similarly referenced numerous other authors. The material citing to the petitioner's work is more relevant to the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there. Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing his work.

[REDACTED], Emeritus Professor, Department of Chemistry, [REDACTED] states:

[The petitioner] completed his thesis research under my supervision and guidance. Until recently, he had been with me for his post-doctoral research work.

* * *

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

[The petitioner] was involved in the synthesis of natural product, [REDACTED] . . . [REDACTED] is a natural product isolated from Chinese medicinal plant, [REDACTED] which shows a very good activity against estrogen-dependent breast cancer. . . . The role of estrogen in breast cancer development increases with age. [The petitioner] and his colleagues synthesized this compound and confirmed the activity of the synthesized [REDACTED], which is almost 10-fold increase than the [REDACTED], the first generation of [REDACTED]. He is the first one to show these results which will be the landmark in the field of Cancer related diseases. This is the ground breaking knowledge in the field of Cancer Research. These data are published in the well-known scientific journal, [REDACTED] which is getting lots of citations for these key results. We are hoping there will be lots of development in the pharmaceutical field because of the entry of these breathtaking data.

* * *

Furthermore, [the petitioner] was involved in the development of [REDACTED] which is a steroid molecule for the treatment of women's diseases like endometriosis. Currently there is no therapy that is known to completely cure endometriosis. Hoping this drug will take care of certain part of patient's pain.

[REDACTED] asserts that the petitioner showed "results which will be the landmark in the field of Cancer related diseases" and that petitioner's work represents "ground breaking knowledge in the field of Cancer Research," but USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). [REDACTED] fails to provide specific examples of how the petitioner's findings have already been utilized in the pharmaceutical industry or otherwise constitute original scientific contributions of major significance in the field. Instead, [REDACTED] states that he is "hoping there will be lots of development in the pharmaceutical field because of the entry of these breathtaking data." In addition, with regard to [REDACTED], there is no evidence showing that the petitioner was an originator of this progesterone receptor modulator. While the petitioner may have helped test [REDACTED] in studies conducted at [REDACTED] there is no evidence showing that the petitioner's original work was of major significance in the field. [REDACTED] states that he is "hoping this drug will take care of certain part of patient's pain," but there is no evidence showing that the petitioner's specific work on [REDACTED] rises to the level of an original contribution of major significance in the field.

In the preceding instances, [REDACTED] comments on the future promise of the petitioner's research and the impact that may someday result from petitioner's work, rather than how the petitioner's past research already qualifies as a contribution of major significance in the field. [REDACTED] assertion that the petitioner's research results "will be the landmark in the field" and his expressions of hope regarding the future impact of the petitioner's work are not adequate to establish that the petitioner's findings are already recognized as major contributions in the field. 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981),

that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. There is no documentary evidence showing that the petitioner’s original work has already resulted in successful pharmaceutical treatments, that his presented findings have been heavily cited by independent researchers, or that his work otherwise equates to original scientific contributions of major significance in the field.

██████████ Advisor, Chief Minister, Government of ██████████ India, and an Adjunct Faculty member at ██████████ states:

[The petitioner] joined ██████████ laboratory for his doctoral study under my guidance in 2003. During his graduate study he had been worked [sic] on several projects from handling more debated mechanistic pathway for ██████████ reactions to cancer related project where molecule under research went for clinical trial. This molecule is ██████████ which found to be a potent inhibitor of the ██████████ enzyme and tested against breast cancer during these clinical trials. . . . This work has been published in ██████████ which is highly reputed journal in the scientific community.

██████████ comments on the petitioner’s doctoral research at ██████████ but there is no documentary evidence showing that the petitioner’s work was of major significance in the field. While the petitioner’s Ph.D. research under the supervision of ██████████ was 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, presentation, or funding, must offer new and useful information to the existing pool of knowledge. It does not follow that every scientist 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.

██████████ Associate Professor of Organic Chemistry, ██████████ states:

[The petitioner] entered the Chemistry graduate program at ██████████ in the fall of 2000 He eventually joined the research group of my colleague ██████████ wherein his Ph.D. work focused on the total synthesis of anti-cancer agent ██████████ and also a number of other pharmacologically-active small molecules. [The petitioner’s] graduate work and output was of the highest quality and he distinguished himself as a highly determined and productive graduate student, publishing four peer-reviewed papers.

With regard to ██████████ comments regarding the petitioner’s published work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.”

Kazarian v. USCIS, 580 F.3d at 1036. 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. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

The petitioner submitted citation evidence reflecting an aggregate of 41 cites to his body of research work. Three of the submitted citations are self-cites by the petitioner's coauthors [REDACTED] and [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The AAO notes that the number of independent citations per article is minimal to moderate. For instance, the submitted documentation reflects that none of the petitioner's articles was independently cited to more than 17 times. Specifically:

1. [REDACTED] was independently cited to once;
2. "Template-directed [REDACTED]: development and application to the total synthesis of [REDACTED] was independently cited to 17 times;
3. "Synthesis of [REDACTED] and related compounds as potential chemopreventive agents" [REDACTED] was independently cited to nine times (plus one self-citation by [REDACTED]; and
4. "[REDACTED] Compounds in Cancer Chemoprevention" ([REDACTED] [REDACTED] was independently cited to eleven times (plus two self-citations by [REDACTED]).

Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published work is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. It is not an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the minimal to moderate number of independent cites per article for his published work is indicative of original scientific contributions of major significance in the field.

[REDACTED], states:

Under my guidance, [the petitioner] published a paper in [REDACTED], which is considered to be one of the best journals for the publication of research in [REDACTED] chemistry. Also, he presented his work at a [REDACTED] Conference for [REDACTED] Chemistry in 2003 Subsequently, [the petitioner] has proved himself as a Medicinal Scientist and has published several papers and presented his results during the National meetings in the field of Cancer Chemistry.

[REDACTED] comments on the article that he coauthored with the petitioner in [REDACTED] but there is no documentary evidence showing that their published findings were of major significance in the field. According to the citation evidence submitted by the petitioner, the article in [REDACTED] was

independently cited to only once since its publication in 2004. The petitioner has not established that this single citation is indicative of a scientific contribution of major significance in the field. In addition, [REDACTED] states that the petitioner has presented his work at the [REDACTED] Research Conference and at national meetings in the field of cancer chemistry. The AAO notes that many professional fields regularly hold meetings and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific conference presentations have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, the AAO is not persuaded that presentations of the petitioner's work at various scientific conferences are sufficient evidence establishing that his work is of "major significance" in the field as a whole and not limited to the engagements in which his work was presented. The petitioner has failed to establish, for example, the impact or influence of his presentations beyond those in attendance so as to establish that his work was of major significance in the field.

[REDACTED] further states:

During his Ph.D. training, [the petitioner] carried out the first total synthesis of a natural product, [REDACTED] which is a very good [REDACTED]. This was a milestone in his research as this synthetic compound, [REDACTED] showed promising results towards the treatment of breast cancer in post-menopausal women. It is hoped that this drug will clear the clinical trials such that women with estrogen-sensitive breast cancer can benefit from it. . . . [The petitioner] published his results and data in the [REDACTED] a high visibility journal in the pharmaceutical research area. With this finding of a drug molecule for the treatment of breast cancer, I have high expectations from [the petitioner] in the field of [REDACTED].

[REDACTED] asserts that the petitioner's work on "[REDACTED] showed promising results towards the treatment of breast cancer in post-menopausal women." In addition, [REDACTED] expresses hope that the "drug will clear the clinical trials such that women with estrogen-sensitive breast cancer can benefit from it," but there is no documentary evidence showing that the petitioner's findings had already been implemented as a treatment method or that his work otherwise equated to a scientific contribution of major significance in the field at the time of filing the petition. As previously discussed, 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. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. [REDACTED] also comments on the petitioner's article in the [REDACTED]. According to the citation evidence submitted by the petitioner, his article entitled [REDACTED] has been independently cited to less than ten times since its publication in 2006. The petitioner has not established that this level of citation is indicative of a scientific contribution of major significance in the field.

[REDACTED] continues:

[The petitioner] also learned the technique of single X-ray [redacted]. Unusually for an Organic Chemist, he became an expert in this analytical technique and solved numerous unknown structures of chemical compounds for the different research groups of University. This skill is both a great advantage to himself in his work with different types of known and unknown compounds and a considerable benefit to his colleagues and collaborators.

[redacted] comments on the petitioner's expertise with the technique of single X-ray [redacted] but assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

[redacted] Professor, Department of Chemistry, [redacted] states:

[The petitioner] was a graduate student at [redacted] earlier in the decade. At the time, he worked for two very prominent organic chemists, [redacted]. During this period he also came forward to train with me in doing X-ray [redacted] on small molecules of importance in organic and medicinal chemistry. [the petitioner] demonstrated consistently that he is an excellent organic chemist and became very skilled in X-ray work, also.

* * *

His skills as an organic synthetic chemist will contribute significantly in this work, and he has qualifications well beyond the minimum that is needed for a position that requires such skills. In addition, since he is also trained in x-ray [redacted], he possesses a second set of skills that are very rare to find in one individual.

As shown in his resume, he has published in substantial journals, using both his background in organic chemistry and in [redacted]

In the same manner as [redacted] comments on the petitioner's skills as an organic synthetic chemist and his research background. Once again, assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Department of Transportation*, 22 I&N Dec. at 221. In addition, [redacted] states that the petitioner "has published in substantial journals." The petitioner, however, has not established that the minimal to moderate number of independent cites per article for his published work is indicative of original scientific contributions of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing findings that did not add to the general pool of knowledge in the field. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions not only be original but of "major significance" in the field.

[REDACTED], Professor and Head, Department of Chemistry, [REDACTED] states:

As an organic chemist, [the petitioner] synthesized the naturally available prenylated flavonoid, [REDACTED]. This molecule was selected for further development by the [REDACTED] program. [REDACTED] was designed by [REDACTED] to expedite the development of compounds of special interest as promising pharmaceutical agents. In order to recognize the importance of this work, one has to appreciate the fact that [REDACTED] chooses only 10 compounds a year for further development out of thousands investigated annually. Historically, compounds of interest chosen by [REDACTED] have often been developed into commercially available drugs. Pharmaceutical drug development takes years of experimentation. To have a record of synthesizing a molecule of that importance, as recorded in [the petitioner's] publication in the [REDACTED] is an extraordinary achievement. Furthermore, [REDACTED] was found to be a potent inhibitor of the [REDACTED]. This enzyme is an important target in treating post-menopausal breast cancer, which is the leading cause of mortality among American women.

[The petitioner] has also done research on cystic fibrosis at [REDACTED], where he has contributed significantly towards finding a cure for this devastating disease.... During his stay at [REDACTED] he synthesized more than 300 compounds in search of the right candidate for a drug to treat cystic fibrosis. This large amount of research work in medicinal chemistry by [the petitioner] has contributed significantly towards the goal of finding a treatment for this terrible disease.

[REDACTED] states that the petitioner "synthesized the naturally available prenylated flavonoid, [REDACTED]" and that "the molecule was selected for further development," but there is no evidence demonstrating that the petitioner's specific findings had already resulted in a commercially successful drug or that they were otherwise of major significance in the field at the time of filing. Once again, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. According to the citation evidence submitted by the petitioner, his article in [REDACTED] entitled [REDACTED] [REDACTED] has been independently cited to only nine times since its publication in 2006. The petitioner has not established that this level of citation rises to the level of an original contribution of major significance in the field. In addition, [REDACTED] comments on the petitioner's "research on cystic fibrosis at [REDACTED]" but there is no documentary evidence showing that the petitioner's work has resulted in a successful drug treatment for cystic fibrosis or that the petitioner's original work was otherwise of major significance in the field.

[REDACTED], Senior Research Chemist, [REDACTED] states:

[The petitioner's] expertise and qualifications in the area of medicinal chemistry is way above than the average person working in the same field.

[The petitioner] has made significant contributions in excess of his peers. In addition to the reputation he possesses, [the petitioner's] experimental skills make him a valuable contributor in this field. Such skills are not easily found among U.S. workers.

* * *

[The petitioner's] expertise in the field of medicinal chemistry is well established through his extensive pharmaceutical research and publications.

* * *

[The petitioner] joined my group at [redacted] Biosciences in January of 2008. During that period I was a section head in the medicinal chemistry at [redacted]. He was assigned to work on a SAR [Severe Acute Respiratory] project and his responsibilities include but were not limited to: synthesis, characterization and purification of specific small molecules designed for the treatment of Systic [sic] Fibrosis.

From the beginning of his career at [redacted], [the petitioner] showed his passion and commitment to Medicinal Chemistry. I found [the petitioner] to be a very talented chemist on the bench, very experienced with all techniques of medicinal research.

[redacted] comments on the petitioner's expertise and qualifications in the area of medicinal chemistry, experimental skills, and research techniques, but [redacted] fails to provide specific examples of how the petitioner's original work has impacted the field at a level indicative of contributions of major significance. As previously discussed, assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221.

[redacted] Manager, Research and Process Development, [redacted] states:

After completing my Ph.D., I joined at [redacted] [redacted] in 1999 as a postdoctoral research fellow. After completing my postdoctoral research studies in 2001, I joined [redacted]

* * *

I have known [the petitioner] through his publications in the field of Cancer Research. One of his molecules, [redacted], promises to be effective against breast-cancer treatment and is under further studies in clinical trials.

* * *

With this growth in the number of cancer cases in United States and in the world, [the petitioner's] research work will definitely lead to discovery and will show some hopes to the

people who are suffering badly. His work has been recognized in one of the most reputed journals, [REDACTED]. Furthermore, his review on [REDACTED] compounds in [REDACTED] showed the study on the mechanisms by which these compounds act as chemopreventive agents.

* * *

[The petitioner's] study at [REDACTED] is again fundamental research work where he was handling different antidotes against poisoning nerve agents which constitute a persistent threat for the population. There are several antidotes introduced during the last century such as [REDACTED] but sadly their strength to counteract the acute toxic effects of these nerve agents is rather insufficient.

[REDACTED] states that [REDACTED] "promises to be effective against breast-cancer treatment and is under further studies in clinical trials." While the AAO does not dispute the originality of the petitioner's research at [REDACTED] as well as the fact that the field has taken some notice of his work, there is no evidence demonstrating that petitioner's work was of major significance in the field at the time of filing the petition. Rather, [REDACTED] speculates about how the petitioner's findings may result in an effective breast cancer treatment at some point in the future. Eligibility, however, must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. In addition, [REDACTED] comments on the petitioner's articles in [REDACTED].

[REDACTED] According to the citation evidence submitted by the petitioner, neither of the preceding articles has been independently cited to more than eleven times since their publication in 2006 and 2007. The petitioner has not established that this level of citation is indicative of a scientific contribution of major significance in the field. [REDACTED] also comments on the petitioner's research at [REDACTED] where the petitioner handled different antidotes against poisoning nerve agents, but there is no documentary evidence showing that the petitioner's original work was of major significance in the field.

[REDACTED], a pharmaceutical consultant, states:

I became acquainted with [the petitioner] . . . in 2007 at [REDACTED] where I was the Vice President of [REDACTED].

* * *

[The petitioner] was assigned to several synthetic medicinal chemistry projects contracted by our biotechnology company clients. These projects were related to new drug discovery and development. He used his training and talent to design compound structures and their synthetic pathways to personally prepare novel and biologically active compounds in our laboratories. Many of the compounds he synthesized demonstrated promising biological activities to be selected for further investigation in the long and tedious new drug development process.

█ comments on the petitioner's "promising" work at █ Biosciences synthesizing compounds for various clients, but █ fails to provide specific examples of how the petitioner's original work substantially impacted the biotechnology industry or was otherwise of major significance in the field at the time of filing. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175.

█, a patent attorney with █ states:

My law firm has been retained to provide patent related strategic expertise, and to prepare U.S. and international patent applications on behalf of █

[The petitioner] is a critical part of the research and development team at █. At present, [the petitioner] is named on 61 patentable invention disclosures, 15 of which are for important drug discoveries relating to diabetes and inflammation diseases which afflict millions of people in the United States. The remaining 46 patents are for valuable new herbal products that treat a variety of other diseases and conditions. Development of these drugs and other products may bring relief to millions of sufferers.

[The petitioner] is currently the Principal Medicinal Scientist for █. He has extensive and valuable knowledge and expertise in drug discovery processes for a number of important diseases. His presence and assistance is necessary if █ is to proceed with the development and commercialization of the potentially valuable new drugs and treatments described therein.

The petitioner submitted a list of his patents in preparation at █, but there is no documentary evidence showing that a U.S. patent was granted for any of the inventions. Regardless, while issuance of a patent recognizes the originality of an idea, it does not demonstrate that the petitioner has made a contribution of major significance in the field through his development of the innovation. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* With regard to the invention disclosures coauthored by the petitioner, the petitioner must demonstrate that his innovations have demonstrably impacted the field as a whole or otherwise equated to original contributions of major significance in the field. In this instance, there is no documentary evidence showing that any of the inventions coauthored by the petitioner have resulted in successful drug treatments available to the public or that the petitioner's original work was otherwise of major significance in the field.

█ President and Chief Executive Officer, █, states:

[The petitioner] has been a creative Research Scientist where he brings his Medicinal as well as Synthetic Organic Chemistry skills and talent. He has been showing dedication and commitment in the natural product based drug discovery research. He is knowledgeable in establishing the compound library using his creative mind and knowledge in synthetic

organic chemistry. He has been assisting us on different grants to raise funds for the research program. Also he is writing several provisional patents applications based on natural product drug discovery.

describes the petitioner's work for , but he fails to provide specific examples of how the petitioner's original work for the company has impacted the field at a level indicative of contributions of major significance. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to a single research institution or employer.

Registration Manager, , states:

Over the last 10 years, [the petitioner] has worked as a scientist in several laboratories and has demonstrated his talent by synthesizing hundreds of different compounds that can be targeted for the treatment of diabetes, inflammation, obesity and cancer.

* * *

[The petitioner] is proficient in several instrumentation including ,

[The petitioner] also understands the various aspects of pharmaceutical research that play a key role in the new drug discovery.

I firmly believe [the petitioner] has achieved a high level of competency that can be used to discover new pharmaceutical products.

comments on the petitioner's talent for synthesizing compounds and the petitioner's research instrumentation proficiency, but fails to provide specific examples of how the petitioner's original work has substantially impacted the pharmaceutical industry or was otherwise of major significance in the field. Once again, assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. That issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221.

states:

I became aware of [the petitioner] when he contacted me to support his permanent residency application.

I have reviewed [the petitioner's] publication in in 2007 where he published a survey on ' This manuscript provides detailed information about sulphur-compounds from natural sources and how they are useful to prevent cancer. He also

explained the mechanistic pathways for how these organosulphur compounds fight cancer cells.

* * *

Research scientists like [the petitioner] have developed interest in a subject that other scientists have overlooked. The C-S bond formation is one of the major challenges in the field of organic chemistry.

[redacted] states that the petitioner's article in [redacted] "provides detailed information about sulphur-compounds from natural sources and how they are useful to prevent cancer" and explains "the mechanistic pathways for how these organosulphur compounds fight cancer cells," but there is no documentary evidence demonstrating that the petitioner's original work has resulted in successful drug treatments available to the public, that the petitioner's findings on C-S bond formation have substantially influenced the work of other medicinal scientists throughout the field, or that the petitioner's research results were otherwise of major significance in the field. According to the citation evidence submitted by the petitioner, his article in [redacted] has been independently cited to eleven times since its publication in 2007. The petitioner has not established that this level of citation is indicative of a scientific contribution of major significance in the field.

[redacted] Alumnae of [redacted] Department of Chemistry,
[redacted] states:

I know of [the petitioner] through his publications in the field of cancer research. His work on the synthesis of [redacted] in 2006 was very useful in the field of cancer related diseases. He showed the synthesis of the natural product [redacted], which is a natural product and confirmed the activity as an [redacted]. Because of his report and many more publications on abyssinone family of compounds, we are investigating these compounds in more detail and we have evaluated their ability to inhibit cancer progression. The initial phase of our study is complete and we have published this work in [redacted]. [The petitioner's] publication on [redacted] geared the community to explore this naturally occurring flavanone in the field of cancer related research and I hope that the future holds new therapies based on this compound.

[redacted] asserts that the petitioner's research report "and many more publications on [redacted] family of compounds" have led to further investigation of the compounds' ability to inhibit cancer progression, but there is no evidence demonstrating that the petitioner's specific findings had already resulted in a commercially successful drug or that they were otherwise of major significance in the field at the time of filing the petition. [redacted] expresses "hope that the future holds new therapies" based on the [redacted] compound. As previously discussed, 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. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175.

The opinions of the petitioner's references are not without weight and have been considered by the AAO. USCIS may, in its discretion, use as advisory opinions statements submitted as expert

testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *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"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a medicinal research scientist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely implemented throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The petitioner submitted documentation showing that he presented his work at various scientific conferences and meetings (such as the [REDACTED] [REDACTED] as evidence for this regulatory criterion. The petitioner's field is in the sciences rather than the arts. The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases, he has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's presentations at scientific conferences and meetings are more relevant to the preceding "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that he has already met. Moreover, it is neither arbitrary, capricious, nor an abuse of discretion to conclude that presentations at scientific conferences do not qualify as display of the petitioner's work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). *Kazarian*, 596 F. 3d at 1122. Accordingly, the petitioner has not established that he 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 his graduate research at [REDACTED] and his postdoctoral research at both [REDACTED]. The record adequately demonstrates that [REDACTED] has a distinguished reputation, but there is no evidence showing that [REDACTED] enjoys a similar reputation. The next issue to be determined is whether the petitioner performed in a leading or critical role for [REDACTED]. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. While the petitioner performed admirably on the projects to which he was assigned, there is no evidence demonstrating that his temporary, subordinate roles were leading or critical for [REDACTED]. 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 institutions where he studied and worked. The AAO notes that one of the petitioner's roles at [REDACTED] was that of a graduate student. Moreover, the petitioner's postdoctoral appointments at [REDACTED] and [REDACTED] were designed to provide specialized research experience and training in his field of endeavor. The documentation submitted by the petitioner does not differentiate his roles from those of the other researchers and permanent faculty (such as professors and department heads) so as to demonstrate his leading role, and fails to establish that he was responsible for [REDACTED] and [REDACTED] success or standing to a degree consistent with the meaning of "critical role."

The petitioner also submitted letters of support and other documentation indicating that he worked for [REDACTED]. There is no documentary evidence showing that the preceding companies have a distinguished reputation. In addition, the petitioner failed to submit evidence demonstrating that his role was leading or critical to the preceding companies as a whole. For instance, the petitioner did not submit an organizational chart or other evidence documenting where his positions fell within the general hierarchy of [REDACTED]. The submitted evidence fails to differentiate the petitioner from the companies' other scientists and managers so as to demonstrate his leading role, and fails to establish that he was responsible for the companies' success or standing to a degree consistent with the meaning of "critical role."

In light of the above, the petitioner has not established that he meets 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 an August 20, 2007 letter from [REDACTED], offering him the "position of Postdoctoral associate at an annual salary of \$35,000." The petitioner also submitted a December 10, 2007 letter from [REDACTED] offering him a "base salary of \$65,000 per year." In addition, the petitioner submitted his 2008 Form W-2, Wage and Tax Statement, from [REDACTED] reflecting gross pay of \$66,977.36. The petitioner also submitted his 2009 Forms W-2, Wage and Tax Statements, from [REDACTED] reflecting earnings of \$14,802.00, and from [REDACTED] reflecting gross pay of \$29,073.58.

In response to the director's request for evidence, the petitioner asserts that [REDACTED] agreed to pay him "\$72,000 per year," but the petitioner failed to submit evidence from [REDACTED] (such as payroll records, a job offer letter, or Form W-2) to support his assertion. 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)). The petitioner also submitted salary information from www.salaryquest.com stating that the "Average Salary" for "Scientist Organic Chemistry" is \$64,800. The information from www.salaryquest.com included a sampling of only eight salaries connected with H1-B nonimmigrant visa applications. The petitioner highlighted the four lowest salaries for Organic Chemistry Scientist positions offered in [REDACTED] CA and [REDACTED] CA. The petitioner, however, must submit evidence showing that he has earned a *high* salary or other *significantly high* remuneration "in relation to others in the field," not simply a salary that is above average for a small sampling of positions that he selected from his locality. The petitioner's reliance on salary comparisons limited to H1-B nonimmigrant visa positions offered in [REDACTED] CA and [REDACTED] CA is not an appropriate basis for comparison in demonstrating that his earnings constitute a "high salary" relative to "others in the field."

The director's decision cited to wage data from the U.S. Department of Labor's Bureau of Labor Statistics indicating that the top ten percent of those in the petitioner's occupation earned "approximately \$146,280" per year.

On appeal, the petitioner states:

The salary that I mentioned in my application, it was during this Greatest Recession. Also it was a start-up company where the funding was very minimal. . . . What I would like to argue here, this is totally depends [sic] on the situation, place and time. Big companies like [REDACTED] where people are working on the same position must be earning high because of the company's reputation, not because of that person's extraordinary capability or his role in that company. People at the same position in small company in fact are working hard, they need to wear different roles of hats but for the small salary, and even though your role is critical.

The petitioner's assertions are not persuasive in demonstrating that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with others in his occupation during the same time period. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (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 evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Summary

The petitioner has failed to demonstrate his receipt of a major, internationally recognized award or to satisfy the antecedent regulatory requirement of three categories of evidence. 8 C.F.R. § 204.5(h)(3).

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. 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)(iii) and (v) – (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), the director's 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 his receipt of "prizes or awards" that are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as discussed by the director, the evidence submitted by the petitioner failed to demonstrate that he holds memberships in associations that require outstanding achievements of their members, as judged by recognized national or international experts in the field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii), the petitioner submitted evidence indicating that his work has been cited to by other researchers in their publications. As previously discussed, the articles citing to the petitioner's work are primarily about the authors' own work or recent trends in the field, and are not about the petitioner or even his work. The petitioner has not established that the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii) is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

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 his co-authorship of four published journal articles with his superiors at [REDACTED] from 2003 until the petition's filing date. The petitioner, however, has not established that his publication record, conference presentations, and original research contributions are indicative of sustained national or international acclaim at the very top of his field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner 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)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a medicinal research scientist of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal." In this case, the record does not contain sufficient evidence that the petitioner's original work had major

significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary.

The AAO notes that the Department of Labor's Occupational Outlook Handbook (OOH), 2012-13 Edition 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>, accessed on June 6, 2013, copy incorporated into the record of proceedings. 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, doctoral programs require graduate students to prepare "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>, accessed on June 6, 2013, copy incorporated into the record of proceedings. This information reveals that original published research, whether arising from research at a university such as [REDACTED] or a private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The minimal to moderate number of independent cites per article at the time of filing the petition is not sufficient to demonstrate that the petitioner's publications have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vii), as previously discussed, the petitioner has not established that he has displayed his work in the field "at artistic exhibitions or showcases." In addition, there is no documentary evidence showing that any of the petitioner's specific conference presentations are frequently cited by independent researchers, have significantly impacted the field, or are otherwise commensurate with sustained national or international acclaim at the very top of the 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 he 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 his temporary training positions as a graduate student and postdoctoral researcher were leading or critical for [REDACTED]. In addition, there is no evidence showing that [REDACTED] has a distinguished reputation. Furthermore, there is no evidence showing that [REDACTED] have distinguished reputations or that the petitioner performed in a leading or critical role for the companies. The petitioner has not established that the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(viii) is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field.

With 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 he has earned a high salary in relation to others in the field. The petitioner has not demonstrated that his salary places him among that small

percentage who have risen to the very top of the field of endeavor. *See Matter of Price*, 20 I&N Dec. at 954; *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x at 713-14; *Grimson v. INS*, 934 F. Supp. at 968; *Muni v. INS*, 891 F. Supp. at 444-45. The salary evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim, or a level of expertise indicating that he 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 have risen to the very top of the field of endeavor. The petitioner, a medicinal research scientist, relies primarily on association memberships that have not been shown to require outstanding achievements, his co-authorship of four journal articles with his superiors at [REDACTED] citation records for his published articles, conference presentations, invention disclosures he co-authored at [REDACTED] that have not been shown to have significantly impacted the field, the affirmation of his colleagues that he is important to the institutions where he has worked, earnings that have not been shown to constitute a high salary relative to others in his occupation, and the general praise in his reference letters.

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 Emeritus Professor at the [REDACTED] in the Department of Chemistry from last more than 40 years and am currently actively engaged in research in the field of Organic Chemistry. I have published over 300 publications and received several awards in the same field, including ACS awards for the [REDACTED]

[REDACTED] states:

I am currently [REDACTED] largest organic chemistry institute with a staff of approximately 300 personnel.... I formerly served as [REDACTED] and as [REDACTED] In my career I have published over 300 peer-reviewed articles in the field of organic and medicinal chemistry, am an inventor on some ten patents, and have received many awards for my researches. In my position as a leader in the field of organic chemistry, a frequent reviewer for many scientific journals and of [REDACTED] grant proposals

[REDACTED] states:

I . . . have been a Professor of Chemistry at the [REDACTED] I am presently the Head of the Chemistry Department at this institution. I have published over 120 papers, 15 book chapters, and three books I am the co-founder of the [REDACTED] and have organized numerous conferences and symposia in this field. I am a Fellow of the [REDACTED] a Fellow of the [REDACTED] and a [REDACTED]

[REDACTED] states:

I hold the position of Alumnae of [REDACTED] in the Department of Chemistry at [REDACTED]. . . . Honors and awards to my name include [REDACTED] Scholar, [REDACTED] Fellowship, [REDACTED] Award for Excellence in Chemistry and [REDACTED] Award. Publications to my name are numerous, in such journals as [REDACTED]

While the petitioner need not demonstrate that there is no one more accomplished than him to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim as a medicinal research scientist, or with 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.

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 the field of endeavor.

Review of the record, 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 and to be within the small percentage at the very top of his field. The evidence on record 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 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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *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.