



U.S. Citizenship
and Immigration
Services

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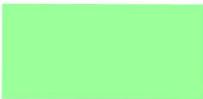


DATE: **APR 23 2014**

Office: TEXAS SERVICE CENTER FILE:



IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter 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 met the requisite criteria for classification as an alien extraordinary ability. The director also determined that the petitioner had failed to demonstrate sustained acclaim and that she is among that small percentage who has 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 category of evidence at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the petitioner submits a brief and additional documentary evidence. The petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), and (vi). For the reasons discussed below, the director's decision is upheld.

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (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.¹ 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)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria

¹ 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).

This petition, filed on September 22, 2012, seeks to classify the petitioner as an alien with extraordinary ability as a physical scientist. The petitioner earned her Ph.D. degree in Physics and Astronomy from [REDACTED] in August 2008. At the time of filing, the petitioner was working as an Assistant Research Scientist in the Department of Physics and Astronomy at [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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 her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is 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 abandoned when failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner submitted membership certificates for the [REDACTED] and [REDACTED]. The director determined that the petitioner had not submitted documentary evidence demonstrating that the [REDACTED] and [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. On appeal, the petitioner does not contest the director's findings or offer additional arguments concerning the petitioner's membership in the [REDACTED] and [REDACTED]. The issue of the preceding memberships, therefore, is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9.

The petitioner also submitted documentary evidence showing that she is a "Full Member" of [REDACTED] which has "membership of nearly 60,000 members." The petitioner argues that her membership in [REDACTED] meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The submitted materials about [REDACTED] indicate that the society invites to full membership "those who have demonstrated noteworthy achievements in research." According to [REDACTED] bylaws: "Noteworthy achievement in research . . . must be evidenced by publications, patents, written reports or a thesis or dissertation." In addition, the petitioner submitted an October 17, 2011 letter from Dr. [REDACTED] Executive Director, stating that "qualifications for full membership include primary authorship of two papers" and that the "Committee on Qualifications and Membership, represented by recognized international experts, carefully considers and votes on all nominations that have been duly received, and recommends for election/promotion those candidates with noteworthy achievements for

² 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.

full membership.” The petitioner, however, has not established that “primary authorship of two papers” constitutes outstanding achievements in her field.³

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “membership in associations” in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snappnames.com Inc. v. Chertoff*, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that her membership in [REDACTED] meets the elements of this regulatory criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner submitted articles from the *New York Times*, *Physics Today*, China Central Television’s website, and the online newsletter of the Chinese Center for [REDACTED]. In addition, the petitioner submitted citation evidence indicating that articles she coauthored have been cited to by other researchers in their publications. The director determined that the preceding material was not about the petitioner and therefore did not meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For instance, the director pointed out that the articles from the *New York Times*, *Physics Today*, China Central Television’s website, and the online newsletter of the Chinese Center for [REDACTED] did not mention the petitioner by name. On appeal, the petitioner does not contest the director’s findings or offer additional arguments concerning the articles from the *New York Times*, *Physics Today*, China Central Television’s website, and the online newsletter of the Chinese Center for [REDACTED]. As the petitioner does not challenge the director’s

³ With respect to Physicists and Astronomers’ job duties, the U.S. Department of Labor’s *Occupational Outlook Handbook, 2014-15 Edition*, states: “Physicists and astronomers typically . . . [w]rite scientific papers that may be published in scholarly journals.” See <http://www.bls.gov/ooh/life-physical-and-social-science/physicists-and-astronomers.htm#tab-2>, accessed on April 9, 2014, copy incorporated into the record of proceedings.

finding that the articles are not about herself, the issue of the preceding articles is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9.

With regard to the citation evidence, the petitioner maintains that “16 independent citations by international researchers” meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). 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 her work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien . . . relating to the alien’s work in the field.” Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act (requiring evidence of only published material “about the alien’s work”). 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. 18, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). The petitioner has not established that the research articles citing to her work discuss her career as a physicist or any other information so as to be considered published material about her as required by this regulatory criterion. Moreover, the research articles similarly cited to numerous other authors.

In addition, the petitioner points to letters of support explaining the impact of her research, but the letters are not published material and do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The regulations contain a separate criterion for original scientific contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The letters explaining the impact of the petitioner’s research and the research articles citing to her work are more relevant to the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and will be further addressed there.

The petitioner further states:

The [redacted] is sponsored by the National Astronomical Observatory of China, the Chinese Academy of Sciences and the Chinese National Science Foundation. . . . Thus all the research work and documents are classified. I, as a researcher representing [redacted] am not allowed to publish anything related to this project on public media. Here, I would like to use 8 C.F.R. Section 204.5(h)(4), “If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.” The . . . submitted documents . . . indicate that I am the person in charge of the [redacted] project that has been reported by public media

The petitioner submits a National Science Foundation (NSF) proposal for the [redacted] entitled [redacted] written by Dr. [redacted] Director of the [redacted]. With regard to [redacted] the petitioner asserts that the “all the research work and documents are classified,” but the petitioner submitted information about the project from the *New York Times*, *Physics Today*, China Central Television’s website, and the online newsletter of the Chinese Center

for [REDACTED]. In addition, contrary to the petitioner's assertion that she is "the person in charge of the [REDACTED] project," the "Management Plan" section of Dr. [REDACTED]'s NSF proposal states:

[REDACTED] and [REDACTED] will manage the project and take prime responsibility for related contracts and for risk management. [REDACTED] together with Research Scientist [REDACTED] and [the petitioner] at [REDACTED] will supervise the manufacturing of and technical parts and integration. Prof. [REDACTED] will provide help in the analyses of the [REDACTED] data and compare them with similar data collected from other astronomical sites. Assistant research scientist [the petitioner] will be in charge of all electronics and will support software development and realtime data reduction.

Although the NSF proposal states that the petitioner is "in charge of all electronics," she does not hold the same level of responsibility as project managers Dr. [REDACTED] and Dr. [REDACTED].

Regardless, where an individual is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The petitioner asserts that she is "not allowed to publish anything related to this project on public media," but the petitioner's appellate brief does not explain why the regulatory criteria are not readily applicable to physicists, astronomers, or physical scientists. Moreover, the petitioner has not established that her occupation is one in which there is not published material about such scientists in professional or major trade publications or other major media.

In addition to the NSF proposal, the petitioner submits letters of support explaining her involvement with the [REDACTED] project, a job performance evaluation of her work by Dr. [REDACTED], a copy of the [REDACTED] e-mails from the [REDACTED] connecting the petitioner to the [REDACTED] project, a "2nd Annual [REDACTED] listing the petitioner's conference abstract entitled [REDACTED] and a conference poster entitled [REDACTED].

None of this documentation, however, meets the requirements of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) as it is not published material about the petitioner. Additionally, the submitted documentation does not demonstrate that the criterion is not readily applicable to the petitioner's occupation.

Furthermore, even if the petitioner were to demonstrate that she is eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which she has not, the petitioner has failed to establish that the evidence she submitted is *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) that requires "[p]ublished 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." For instance, none of the documents submitted as comparable evidence demonstrate that the petitioner has garnered a wider reputation in the field in the same manner as having material published about her in professional or major trade publications or other major media. The petitioner has not established that the evidence she submitted as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) is of the same caliber as that required by the regulation.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner submitted evidence demonstrating that she peer-reviewed manuscripts for *Journal of Modern Optics* and *Review of Scientific Instruments*. Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is affirmed.

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

The petitioner submitted letters of support, evidence of her publications and presentations, citation indices for her published work, and documentation that the director had already addressed under the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) – (iv). The director acknowledged the petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the petitioner's work equated to original contributions of major significance in the field. The director therefore concluded that the petitioner did not establish eligibility for 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.” Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related 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).

On appeal, the petitioner states:

[T]he major significance of my work is demonstrated in the totality of the submitted evidence of my achievements, including my membership earned in association in the field for which classification is sought and require [sic] outstanding achievements . . . , published material about me in professional or major trade publications or other major media . . . , my participation as a judge of the work of others in the same or allied field. . . , and my authorship of scholarly articles in the field published in professional or major trade publications or other major media . . . and related documents of new evidence showing my contributions to the field

With regard to the petitioner's association memberships, published material about herself, participation as a judge of the work of others, and authorship of scholarly articles, the regulations contain separate criteria for those categories of evidence. 8 C.F.R. § 204.5(h)(3)(ii) – (iv) and (vi). Evidence relating to or even meeting the criteria for those categories of evidence is not presumptive evidence that the petitioner also meets the criterion at 8 C.F.R. § 204.5(h)(3)(v). In *Kazarian v.*

USCIS, 580 F.3d at 1036, the court held that publications are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance” and 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. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for association memberships, published material, judging the work of others, authorship of scholarly articles, and original contributions of major significance, USCIS clearly does not view those categories of evidence 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.

In addition, the petitioner points to the letters of support from experts in the field as evidence that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(v). The petitioner asserts that the “letters provide independent and objective evaluations for the significant international impact of [her] contributions to the research field.”

Dr. [REDACTED] Professor, School of Physics, [REDACTED], stated:

I have been working with researchers from the USA and China in developing instruments installed on an autonomous astronomical observatory called [REDACTED] on [REDACTED], in Antarctica. The [REDACTED] is a remote, self-powered, self-heated automated Antarctic observatory designed and built by the [REDACTED] Antarctic astronomy group. [REDACTED] represents the major component of [REDACTED] contribution to the Chinese-led program of astronomical research at [REDACTED], the highest point on the Antarctic plateau.

* * *

In 2009, [the petitioner] contacted me for the [REDACTED] interface document when she was designing an instrument called [REDACTED] which would be installed on [REDACTED] to monitor atmospheric turbulence within the ground layer on Earth. Dr. [REDACTED] from [REDACTED], [the petitioner] and I coordinated the international delivery, installation and troubleshooting of [REDACTED] through email during and after [REDACTED] installation on [REDACTED]. [The petitioner] was also a key contributor in the remote controlling and collection of data using [REDACTED] after its installation and testing on [REDACTED] by Dr. [REDACTED] in 2010.

Dr. [REDACTED] comments that the petitioner designed “an instrument called [REDACTED] to monitor atmospheric turbulence within the ground layer” at the [REDACTED] project and that she was “a key contributor in the remote controlling and collection of data using [REDACTED] after its installation,” but he does not provide specific examples of the petitioner’s work has influenced the field as a whole or otherwise constitutes an original contribution of major significance in the field.

Dr. [REDACTED] Associate Director of Chinese Center for Antarctic Astronomy and Professor, [REDACTED], stated:

In early 2010, I installed and site tested the lunar [REDACTED] instrument at [REDACTED] on the Antarctic plateau. [REDACTED] is used to probe the seeing conditions at [REDACTED] to provide critical data for assessing the quality of the site for astronomical applications. . . . The ultimate goal is to build an astronomical observatory on the Antarctic Plateau and [REDACTED] is a critical instrument for site survey. [REDACTED] was designed and developed by [the petitioner] from [REDACTED] [The petitioner] shipped [REDACTED] to me from the USA and communicated with me directly through emails to assist us in installation and troubleshooting. After [REDACTED] had been successfully installed and tested in our Antarctic labs, [the petitioner] worked with both Chinese and Australian researchers in the controlling and data acquisition using [REDACTED] In 2011, [the petitioner] provided the replacements and service plan for [REDACTED] for the 27th Chinese Antarctic Research Expedition team.

Although Dr. [REDACTED] and Dr. [REDACTED] mention that the petitioner designed and developed the [REDACTED] for the [REDACTED] on [REDACTED] project in Antarctica and that she helped control data acquisition from the instrument, they do not state and the record does not reflect that the petitioner was the first scientist to have originated or invented a lunar [REDACTED] instrument. While Dr. [REDACTED] and Dr. [REDACTED] comments indicate that the petitioner's [REDACTED] instrument was useful to the [REDACTED] project, there is no documentary evidence showing that the petitioner's specific work rises to the level of an original scientific contribution of major significance in the field. 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 the petitioner's specific collaborative projects.

Dr. [REDACTED] Professor of Physics, [REDACTED] stated:

I came to know [the petitioner] after I accepted a position as professor of physics in [REDACTED] Department of Physics in 2009. . . . One group, led by Dr. [REDACTED] caught my particular attention because they have been doing fundamental tests of quantum mechanics for many years and made significant achievements. As a key researcher of this group, [the petitioner] plays a very important role in the exact experimental realization of Bohm's version of the Einstein-Podolsky-Rosen (EPR) experiment. Recently I attended [REDACTED] School on Quantum Science and Engineering in [REDACTED] WY, where she gave a very interesting and stimulating talk on mercury dimer spectroscopy and classic version of Bohm's EPR experiment.

* * *

[The petitioner] has demonstrated outstanding ability in her professional field. In her Ph.D. research project, she made by far the most accurate measurements of mercury dimmer spectrum. . . . Her research work has been presented in several national and international conferences and gained substantial interests as well, such as the SPIE [Society of Photo-optical Instrumentation Engineers], APS [American Physical Society] and Ocean Optics Meetings.

Dr. [REDACTED] comments on the petitioner's presentations at SPIE and APS conferences, Ocean Optics Meetings, and the Summer School on Quantum Science. With regard to the petitioner's presentations, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, employers, and government agencies promote and sponsor these meetings and conferences. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that the petitioner's presented work has been frequently cited by independent researchers, has substantially impacted the field, or has otherwise risen to the level of contributions of major significance in the field. Although presentation of the petitioner's work demonstrates that her findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, presentations of the petitioner's work at various meetings and conferences are not sufficient evidence establishing that her work is of "major significance" to the field as a whole and not limited to the engagements in which her work was presented. The petitioner has failed to establish, for example, the impact or influence of her presentations beyond those in attendance so as to establish that her work was majorly significant to the field.

Dr. [REDACTED] Emeritus Professor in the Department of Chemistry and Chemical Biology at [REDACTED] stated:

In my visits to [REDACTED] I have met [the petitioner] and become familiar with her research.

* * *

[The petitioner's] research, . . . published in a highly respected journal, *Chemical Physics*, provided a major body of high resolution data enabling detailed analysis of the rotational and vibrational structure of a key triplet-singlet electronic transition in Hg_2 produced in a free-jet expansion beam. Her results constitute an important step in the experimental realization of Bohm's spin-1/2 particle version of the famous Einstein-Podolsky-Rosen (EPR) "thought" experiment.

* * *

Furthermore, [the petitioner] has studied experimental tests of Bell's Inequalities. . . . [The petitioner], together with Dr. [REDACTED] and Dr. [REDACTED], co-authored a book chapter, "Do Experimental Violations of Bell Inequalities Require a Non-Local Interpretation of Quantum Mechanics? II: Analysis a la Bell", in *Quantum Reality, Relativistic Causality, and Closing the Epistemic Circle*. In this paper, analyses based both on Bell's derivation of the inequality and on the Clauser-Home version for inherently stochastic theories were provided. . . . Her results showed that the assumption of hidden variables in the derivation of a Bell inequality leads to probabilities whose quantum mechanical counterparts are, in fact, negative under some conditions.

[The petitioner's] findings have already been much utilized by other scientists. For example, Dr. [REDACTED], of [REDACTED], used [the petitioner's] results in his own

experiments and cited her book chapter in his paper, "The EPR thought experiment, the Bell's inequality and the experimental evidence of quantum correlations." Similarly, Dr. [redacted] from [redacted] used [the petitioner's] analyses given in her widely cited *Chemical Physics* paper to calculate and validate the rotational and vibrational spectroscopic constants of mercury dimer.

Dr. [redacted] asserts that the petitioner's "findings have already been much utilized by other scientists," but he identifies only two scientists who have relied on the petitioner's work. In addition, Dr. [redacted] points to articles coauthored by the petitioner in *Chemical Physics* and *Quantum Reality, Relativistic Causality, and Closing the Epistemic Circle* and states that other scientists have cited to her work. The petitioner submitted citation evidence from Google Scholar showing that the preceding articles each garnered two independent citations. The petitioner has not established, however, that such a level of citation is indicative of scientific contributions of major significance in the field. Although the petitioner's research findings have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every physicist who performs original research that adds to the general pool of knowledge in the field inherently has inherently made a contribution of "major significance" to the field as a whole.

The petitioner submitted citation evidence reflecting an aggregate of 26 cites to her body of research work. Eleven of the submitted citations are self-cites by the petitioner's coauthors (such as Dr. [redacted] or Dr. [redacted]). Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The submitted documentation reflects that none of the petitioner's articles was independently cited to more than five times. Specifically:

1. [redacted]
2. [redacted] was independently cited to two times:
[redacted]
3. [redacted] cited to zero times (plus one self-citation by Dr. [redacted])
4. [redacted] was independently cited to five times (plus one self-citation by Dr. [redacted]; [redacted])
5. [redacted] was independently cited to two times (plus four self-citations by Dr. [redacted])
6. [redacted] was independently cited to four times (plus one self-citation by Dr. [redacted] and [redacted])

6. [redacted] was independently cited to once (plus one self-citation by Dr. [redacted])

In the same manner as Dr. [redacted] Dr. [redacted] Senior Director of Design and Engineering, [redacted] Texas, commented on citations garnered by the petitioner's work. Dr. [redacted] stated:

[The petitioner's] work has also been widely cited worldwide. For instance, Dr. [redacted] at [redacted] cited to [the petitioner's] EPR breakthroughs, in Quantum Reality, Relativistic Causality, and Closing the Epistemic Circle, in his paper, [redacted] Building on her findings, he developed an experiment to create quantum entanglement using hydrogen molecules. Dr. [redacted] from [redacted] has cited [the petitioner's] work on mercury dimer spectroscopy several times. He used [the petitioner's] analytic methods and results to calculate the potential energy curve of the electronic ground state of the mercury dimer. Dr. [redacted] results, citing to [the petitioner], were published in both the [redacted] Furthermore, Dr. [redacted] of the [redacted] utilized [the petitioner's] approach of using photorefractive holographic interferometry to build a Fizeau interferometry instrument. His published results, in [redacted] cited to [the petitioner's] breakthrough findings.

In addition, Dr. [redacted] Professor, [redacted] Germany, pointed to further examples where the petitioner's work has been cited to by others, stating:

As an experimental physicist, [the petitioner] has focused her research on mercury dimer (Hg₂) spectroscopy and the Einstein-Podolsky-Rosen Experiment.

* * *

To increase the accuracy of the rotational constants and resolve the spectrum of Hg₂, [the petitioner] developed a novel method to modify the cavity of an Alexandrite laser. Her modification significantly improved the quality of the laser beam and hence the precision of the rotational constants. . . . This result provides the most accurate bond lengths of Hg₂ to date, which is not only integral to her EPR [Einstein-Podolsky-Rosen] findings, but is also very important to other research, and was published in the top ranked international peer reviewed journal, [redacted]

Her experimental data established excellent benchmarks for other researchers to compare with their rotational and vibrational spectroscopic constants. As an example, Dr. [redacted] cited [the petitioner's] rotational structure analysis in his paper published in [redacted] as an erratum to his direct determination of the ground- and excited-state bond lengths of the rotational structure of the $v' = 45 \leftarrow v'' = 0$ band of the $^10_u^+ (5^1 P_1) \leftarrow X^1 0_g^+$ transition in ²²⁸Cd₂. As another example, Dr. [redacted] from [redacted] cited [the petitioner's] results to validate his theoretical calculations of rotational and vibrational

spectroscopic constants of mercury dimers. His finding was published in the [REDACTED]

* * *

However, [the petitioner's] breakthroughs are not limited to work in the EPR experiment. Prior to working on the EPR experiment, [the petitioner] focused her attention on photorefractive crystal-based laser holographic interferometers and their applications in optical testing. She created several innovative methods to measure the physical properties of objects nondestructively (e.g., the temperature distributions of a flame or detecting cracks in a metal beam). Her remarkable advances have provided valuable insights in laser holography testing and optical information processing, and were published in the [REDACTED]

[REDACTED] Dr. [REDACTED] from [REDACTED] cited her paper, in his publication in [REDACTED] as he utilized her results to improve his measurement of the refractive index of optical wave guide. Further, Dr. [REDACTED] from [REDACTED] cited her method of nondestructive measurement and made his own interferometer design in his paper in [REDACTED]

Dr. [REDACTED], Dr. [REDACTED], and Dr. [REDACTED] comments demonstrate that some scientists have cited to the petitioner's work and relied upon her findings, but are 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 regarding her work. However, 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 number of independent cites per article for her research work is indicative of original scientific contributions of major significance in the field.

Dr. [REDACTED] Distinguished Professor, Department of Chemistry, [REDACTED] stated:

[The petitioner's] research involves the study of *ab initio* calculations of the ground- and excited-state potential energy curves of Hg₂. In particular, her focus was on the experimental measurements of rotational and vibrational constants together with the bond lengths for the excited and ground electronic energy states involved in the transition(s). The excellent paper by [the petitioner] was a very significant accomplishment, and absolutely critical as she provided the most accurate bond length measurements to date for Hg₂. Her report highly influenced my group's work and helped us to obtain the energy curve of the electronic ground state of the mercury dimer, which we found to be in very good agreement with recent theoretical calculations and experimental data. Her experimental data also provided an opportunity to compare our theoretical equilibrium distances and rotational and vibrational spectroscopic constants. Together with our results obtained for non-relativistically-treated Hg₂, when compared to her previous results, we confirmed that indeed, relativistic effects account for the known peculiarities of the mercury dimer. We have cited [the petitioner's] report in two of our recent publications

* * *

Certainly the work done by [the petitioner] has contributed significantly to our understanding of Hg₂.

Dr. [redacted] states that he cited to the petitioner's work in [redacted] and found her bond length measurements useful and accurate, but there is no documentary evidence showing that the petitioner's findings were frequently cited by independent researchers or that they have been utilized by other scientists at a level indicative of contributions of major significance in the field.

Dr. [redacted] Distinguished Professor, [redacted] New Zealand, stated:

The excellent paper by [the petitioner] in the [redacted] was a very significant accomplishment, and it is absolutely critical as it provides the most accurate spectroscopic data of Hg₂. Previous to her work, there was very little accurate experimental spectroscopic data for the mercury dimer. . . . Her findings lay important groundwork for not only further explorations of quantum physics, but also, have numerous applications in improving the laser design and the accuracy of molecular spectroscopy.

* * *

My laboratory has cited to [the petitioner's] important findings in two of our recent publications, published in the [redacted]. In our papers, we presented spectroscopic constants as a function of temperature and compared our findings with [the petitioner's] experimental data, as her findings are the most current and accurate. . . . [The petitioner's] findings were integral to the analysis of our experimental data, and we found her results very helpful.

Dr. [redacted] asserts that the petitioner's work "provides the most accurate spectroscopic data of Hg₂" and mentions that his laboratory has cited to her findings, but the evidence submitted does not demonstrate that the petitioner's work has affected the field in a major way or that the number of independent cites to her work is indicative of contributions of major significance in the field.

Dr. [redacted] Editor, [redacted] stated that the petitioner "has expertise in the fields of applied optics, quantum optics, lasers, instruments, adaptive optics, optical engineering, spectroscopy. He [sic] was chosen as a reviewer based on his expertise." Assuming the petitioner's technical expertise is unique, the classification sought was not designed for alleviating skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. 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). Dr. [redacted] fails to provide specific examples indicating that the petitioner's work has substantially impacted the field or that her work was otherwise of major significance to the field.

Dr. [redacted] Editor-in-Chief, [redacted] also commented on the petitioner's work as a peer reviewer, stating:

For the [REDACTED] the selection of technical reviewer is serious and rigorous and only those who have made significant achievements and established an international reputation of excellence in their fields will be selected. . . . [The petitioner] always provided timely and insightful review comments, which not only assisted the editors to determine the acceptance of the manuscripts but also helped the authors to improve the quality of their manuscripts.

Dr. [REDACTED] comments on the petitioner's participation as a technical reviewer, but there is no documentary evidence showing that the petitioner's involvement in the peer review process equates to an original contribution of major significance in the field. The regulations contain a separate criterion for judging the work of others, 8 C.F.R. § 204.5(h)(3)(iv), a criterion that the petitioner has already met. Articles are selected for publication in scientific journals through the peer review process. A journal's editorial staff will enlist the assistance of professionals in the field who agree to review submitted papers. It is not unusual for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Dr. [REDACTED] fails to explain how the petitioner's task of reviewing articles for [REDACTED] rises to the level of an original contribution of major significance in the field.

The opinions of the petitioner's references 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 International*, 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 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 physical 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 her field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that she 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 director determined that the petitioner did not establish eligibility for this regulatory criterion. The petitioner, however, has documented her authorship of scholarly articles in professional publications and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets 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 director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

B. Summary

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

III. CONCLUSION

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

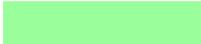
Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

⁴ The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

(b)(6)



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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.