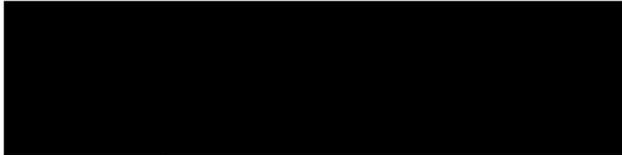


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D8

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 20 2010

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O).

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner, a non-profit medical research organization, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien of extraordinary ability in the sciences. The petitioner seeks to employ the beneficiary as an assistant project scientist for a period of 17 months.

On March 2, 2010, the director denied the petition concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field of endeavor. Specifically, the director determined that the evidence submitted did not satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the director failed to consider evidence that would establish that the beneficiary meets at least one additional criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B), in addition to the two criteria that the director determined have already been met.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

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, and seeks to enter the United States to continue work in the area of extraordinary ability

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only

for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum,

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) 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 or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* 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 *6 (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).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary ability" as "one of that small percentage who have risen to the very top of the field of endeavor."

The AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

II. The Beneficiary's Eligibility under the Evidentiary Criteria

The petitioner seeks to classify the beneficiary as alien with extraordinary ability in the sciences in the fields of neurobiology and physiology. The beneficiary received the equivalent of a Ph.D. in biological sciences from the Ukrainian Academy of Sciences in 1992, and a Master of Science degree from the Moscow Institute of Physics and Technology in 1986. Since 1992, he has conducted research at the Free University of Berlin, University of Innsbruck, Stanford University Medical Center, Bogomoletz Institute of Technology (Kiev National University), Georgetown University, University of Maryland Biotechnology Institute, the University of Michigan Medical Center, and at the petitioning university.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* There is no evidence that the beneficiary has received any major awards in his field, and the petitioner does not claim that the beneficiary meets this criterion.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).¹

1. *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor*

¹ The petitioner has not claimed to meet or submitted evidence relating to the criteria not discussed in this decision.

At the time of filing, the petitioner stated that the beneficiary meets this criterion based on the following:

- Award of a "Beginning Grant-in-Aid" in the amount of \$132,000 from the American Heart Association for the project "Subsarcolemmal calcium signaling in heart cells."
- Research Award 1995, awarded by the School of Medicine, Free University of Berlin
- A "Trainee Abstract Travel Award" for attendance at the 2003 AHA Scientific Sessions, granted by the American Heart Association.
- 2nd Prize at the All-Union Contest of Young Scientists in Pharmacology, 1988, awarded by the National Academy of Sciences of Ukraine Institute of Bioorganic Chemistry and Petrochemistry in 1988.

The petitioner submitted documentary evidence of the beneficiary's receipt of such awards, but did not offer any explanation or additional documentation demonstrating how these awards qualify as nationally or internationally-recognized awards prizes or awards for excellence.

In a request for evidence ("RFE") issued on February 1, 2010, the director acknowledged each of these awards, and advised that further evidence would be required to establish that any of them are nationally or internationally-recognized prizes in the beneficiary's field. The director specifically requested evidence to establish the origination, purpose, significance and scope of any national or international award, the criteria used to nominate and judge the participants and award winners, and evidence that identifies previous winners of each award for the past three to five years.

While the petitioner submitted a timely response to the RFE, it did not address this criterion. The director determined that the petitioner failed to establish that these awards are "nationally or internationally recognized awards in which the beneficiary competed with other top professionals in the field." Referring to the beneficiary's research grant, specifically, the director observed that a research grant is principally designed to fund future research and is not an award to honor or recognize past achievement.

On appeal, the petitioner asserts that the director failed to recognize that the beneficiary's [REDACTED] is a nationally or internationally recognized award. The petitioner submits a letter from [REDACTED] of the National Academy of Sciences of Ukraine, who addresses the award and states:

All prizes in the competition were awarded by decision of the academic committee appointed by the Pharmacological Committee of the USSR to evaluate all applications submitted to the "All-Union Contest of Young Scientists in Pharmacology in 1988". . .

The competition was open to all researchers throughout the former USSR who were less than 33 years of age, and conducting research at any academic institution in the former USSR in the field of pharmacology or related disciplines that involve studies of pharmacological agents.

Counsel further asserts that "a simple Google search" on the issuing organization reveals that the organization is "national in scope." The petitioner does not contest the director's finding that the beneficiary's research grant, research award and travel award are not nationally or internationally-recognized prizes or awards.

Upon review, the AAO concurs with the director's conclusion that the petitioner has not satisfied this criterion. The letter from [REDACTED] attesting to the scope and significance of the beneficiary's second-prize award in the All Union Contest of Young Scientists in Pharmacology will not be considered, as the director previously advised the petitioner that additional evidence would be required to establish the significance of this award.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence pertaining to the beneficiary's award to be considered, it should have submitted the documents in response to the director's explicit request for such evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The AAO acknowledges counsel's contention that the director erred by requiring that the petitioner submit evidence that "the Beneficiary competed with other top professionals in the field," in order to meet this criterion. The AAO agrees that a petitioner can meet the plain language of this criterion by submitting evidence that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in his field of endeavor. However, it is the petitioner's burden to establish every element of this criterion. A competition may be open to individuals from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with the beneficiary's awards. The petitioner cannot simply submit an award certificate and suggest that USCIS should have used *Google* to research the significance of the award. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the plain language of the regulation requires documentation of "receipt of nationally or internationally recognized prizes or awards," rather than documentation of "receipt of a nationally recognized prize or award." Section 101(a)(15)(O)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) expressly requires evidence that the beneficiary has received "prizes or awards." Therefore, even if we found the beneficiary's second place award in the All Union Contest of Young Scientists in Pharmacology is qualifying under this criterion, which we do not, a single nationally or internationally recognized prize or award would not meet the plain language of the regulation.

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

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary 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. An alien would not earn acclaim at the national level from a local publication. 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.²

To satisfy this criterion, the petitioner submitted evidence in the form of articles that cite the beneficiary's published work, as well as evidence of citations of the beneficiary's published articles from *Google Scholar*.

As noted by the director, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), however, requires that the published material be "about the alien" relating to his work rather than simply about the beneficiary's work. Counsel emphasizes on appeal that several of the articles "in fact discuss and characterize the Beneficiary's work in some detail, and in several instances present the Beneficiary's work as authoritative on the point being discussed." Nevertheless, the AAO concurs with the director that it cannot be persuasively asserted that these scholarly articles are "about" the beneficiary.

While such evidence is relevant as to the significance of the beneficiary's scholarly articles and original contributions, it does not meet the plain language requirements for qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner did not specifically address this criterion prior to the director's decision. On appeal, the petitioner asserts that the beneficiary can in fact satisfy this criterion and has submitted evidence to establish that the beneficiary has reviewed papers submitted for publication to *Neurophysiology*, *General Physiology and Biophysics* and the *The Journal of Physiology*, among others. The petitioner has also provided evidence that the beneficiary was requested by the National Academy of Sciences of Ukraine to participate as an evaluator of doctoral thesis research performed between 2002 and 2005 at the Academy's A.A. Bogomoletz Institute of Physiology. The submitted evidence satisfies the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4),

² 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.

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

In her decision, the director determined that the beneficiary meets this criterion. The AAO concurs with the director's determination. The record contains evidence that the petitioner's various scientific articles have been individually well-cited and that his work as a whole has been cited at least 396 times.

Further, the petitioner has submitted a total of nine letters from various experts in the beneficiary's field stating that the petitioner's original scientific contributions are of major significance in the field and providing specific examples of those contributions and how they have already significantly contributed to the field. We cite representative examples below.

The record contains a letter from [REDACTED] [REDACTED] describes the beneficiary's prior research activities and states:

I consider the topics of his investigation to be of utmost importance as a basic science background, from which novel therapeutic approaches for treatment of various neurodegenerative disorders, such as Alzheimer's disease, Parkinson's disease, amyotrophic lateral sclerosis, Huntington's disease and spinocerebellar ataxias can be developed, as recent evidence indicates that neuronal calcium signaling is abnormal in many of these illnesses. I strongly believe that understanding of molecular mechanisms of calcium antagonists will help and promote their utilization as a remedy used in combination with other neurodegenerative disease-specific therapeutic approaches.

More recently [the beneficiary] has been involved in the development and refining of novel imaging approaches for exploring calcium signaling and tracking small fluorescent entities with high precision, and has addressed very essential questions of presynaptic regulation of exocytosis. This included the application of the total internal reflection fluorescence (TIRF) microscopy to study calcium signaling produced by individual voltage-gated and calcium-induced calcium release channels. For this very innovative idea and corresponding project, [the beneficiary] [REDACTED] from the American Heart Association. Later at the University of Michigan he applied TIRF-microscopy to study motion of chromaffin granules that occurs prior to exocytosis of the vesicles, as well as the molecular nature of interactions that determine dense core vesicle tethering. [The beneficiary] brilliantly solved this problem by employing a novel approach to analyzing the motion based on very accurate measurements of the fluorescent granule center position. This study determined that on a molecular scale, chromaffin granules indeed tend to increase their motion shortly before exocytosis, in contrast to the classical, "textbook" idea of vesicles being firmly docked as a prerequisite for subsequent fusion and secretion. This was a significant advance in the field and this work has been published in a very prestigious journal, the Proceedings of the National Academy of Sciences of the U.S.A.

The record contains a letter from [REDACTED] [REDACTED] states that he has not worked with the beneficiary directly, but is "well aware of his extraordinary achievements" primarily "through his highly regarded publications international scientific journals and abstracts and presentations at international scientific meetings." [REDACTED] further states:

[The beneficiary's] contributions and expertise in the field of calcium signaling, calcium channel properties and presynaptic mechanisms of secretion and neurotransmission are extremely unique and quite remarkable. Through his work in the area of G-protein-mediated inhibition of neuroendocrine calcium channels accomplished at Freie Universitat Berlin, followed by structure-function studies on calcium channel inactivation and putative binding sites of calcium channel blockers carried out in Innsbruck University, [the beneficiary] gained experience that was invaluable for his further studies of functional interactions between neuronal calcium channels and individual proteins of presynaptic neurotransmitter release machinery, particularly syntaxin 1A, completed at Stanford University. He has demonstrated that this core SNARE protein is a physiological modulator of the slow inactivation mechanism of neuronal calcium channel function. One of the top researchers in this area worldwide, [the beneficiary's] investigation of the syntaxin 1A regulation of presynaptic calcium channel gating contributed tremendously to understanding of the nature of this effect, and also helped to establish experimental protocols which following investigators used

[The beneficiary] has also made unique and crucial contributions towards the development of novel technologies of calcium signaling research using total internal reflection fluorescence (TIRF) microscopy and that have allowed for imaging of elementary calcium signaling, up to the resolution of events produced by individual calcium channels. He subsequently applied TIRF microscopy to investigate secretory granule behavior immediate adjacent to the plasma membrane. In these seminal studies he questioned the "classical" view of a long-lived docked state as a prelude to granule fusion, and discovered that this notion does not encompass the physical reality of molecular scale motions, multiple tethering states, and indeed increased significant travel immediately preceding the exocytotic event. I consider this result of [the beneficiary's] multidisciplinary study to be an accomplishment unparalleled by other researchers in this highly specialized field.

[REDACTED] states that the beneficiary is remarkable due to "his unique combination of abilities which bridge the fields of fluorescence imaging/microscopy to neuroscience/molecular and cell physiology." Finally, he states that the beneficiary's discoveries in the field of molecular mechanisms of synaptic transmission are "key towards understanding the etiology and pathogenesis of numerous neurodevelopmental disorders, diabetes, immune deficiency and other diseases."

The record also contains a letter from [REDACTED] professor of neurobiology at the petitioning university, who discusses the beneficiary's prior research conducted at the University of Michigan in the area of motion of secretory vesicles in chromaffin cells. [REDACTED] notes that the beneficiary's discovery was published in 2007 in the Proceedings of the National Academy of Sciences and "is widely referred to by

scientists around the world." [REDACTED] concludes that the beneficiary's "studies have a profound impact in the presynaptic mechanisms of neuronal communication and regulation of calcium channels," and states that the beneficiary "has made significant contributions to neuroscience in the U.S. and abroad."

[REDACTED] professor of applied neurophysiology at the University of Bristol in the United Kingdom, states that he became acquainted with the beneficiary's research by reading his papers in the field of calcium channels regulation, and has interacted with him at scientific meetings. [REDACTED] states that the beneficiary's work at the Freie Universitat Berlin "showed for the first time that different heterotrimeric G-proteins could mediate regulation of ion channels from one specific receptor." He further states:

In a subsequent research project conducted in Innsbruck University, [the beneficiary] successfully identified molecular structures involved in binding of phenylalkylamine and benzothiazepine drug families in cardiac/muscle calcium channels (L-/S-types), which overlap with structure motives that determine inactivation gating properties also in neuronal calcium channels (P/Q-type). I have a particular appreciation and interest in this direction, because it is related to the channel mutation-induced diseases and provides a potential basis for discoveries of suitable therapeutic interventions.

[REDACTED] further indicates that the beneficiary's research at Stanford University with respect to the interaction of the synaptic protein syntaxin 1A with neuronal calcium channels was "a pioneering demonstration of syntaxin as a physiological selective modulator of the slow inactivation of presynaptic calcium channels, and provided yet another evidence of multiple mechanisms of channel inactivation." Finally, [REDACTED] discusses the beneficiary's current research and states that he is "confident in the forthcoming discoveries and significant impact in his amazing and ground-breaking research."

The record also contains a letter from [REDACTED]

[REDACTED] who states that, although he has never collaborated with the beneficiary, he is "very well aware of his work and the impact it had in the field of calcium channel regulation and understanding of presynaptic mechanisms." [REDACTED] states:

It is now well established that the activity of calcium channels is subject to modulation by a number of different means, including pharmacological blockers, voltage-dependent gating, G-protein coupled receptors and synaptic proteins. [The beneficiary] has contributed to understanding of the molecular nature of all these mechanisms.

* * *

I am most closely familiar with [the beneficiary's] . . . structure-function studies of pharmacological receptors and inactivation properties of voltage-gated calcium channels conducted in Innsbruck University (Austria), as well as regulation of neuronal calcium channel gating by a synaptic protein syntaxin 1A, accomplished in Stanford University. It has turned out that pharmacological and physiological modulations share overlapping structural determinants, and have similarities in their mechanisms. A few key amino acids that determine binding of calcium antagonists also dramatically affect channel inactivation gating

properties. [The beneficiary] has demonstrated the role of syntaxin as a physiological modulator of slow inactivation in neuronal calcium channels.

Indeed, I have cited his manuscripts on these topics sixteen times in my reviews and research articles, because I consider this work to be a very important contribution in the area of calcium channel regulation. Based on his knowledge, research expertise and his reputation, I consider [the beneficiary] one of the leading scientists in his area of expertise in the world.

Finally,

states that, prior to his first meeting with the beneficiary, he was "familiar with his outstanding work in the field of voltage-gated calcium channel regulation, calcium signaling and presynaptic mechanisms." further describes the beneficiary's contributions as follows:

Results and findings of one of his earlier research projects . . . demonstrated that syntaxin 1A could selectively affect one type of calcium channel inactivation, have indeed made a large impact on further studies of functional interaction of neuronal calcium channels with SNARE proteins. Research topics and methodology in several laboratories in the USA and other countries have been strongly influenced and promoted by his discovery. This also applies to my own group, as we demonstrated the regulatory role of other presynaptic proteins, munc 18 and munc 13, in controlling SNARE proteins pairing, and modulating syntaxin 1A effect on calcium channel inactivation. . . . We cited [the beneficiary's] original work in our manuscripts, as did many dozens of other scientists around the globe whose research was based on [the beneficiary's] findings, including

[The beneficiary's] work at the University of Michigan in laboratory has made an even larger advance in the understanding of presynaptic mechanisms involved in exocytosis. They have overturned the long-lived classical idea of secretory vesicles being stably docked, which has been formulated based on results of electron and confocal microscopy. TIRF-microscopy developed in in combination with sophisticated image analysis algorithms, allowed the scientists to dynamically track motion of the vesicles with accuracy approaching the optical diffraction limit. This methodology allowed [the beneficiary] to demonstrate that, in contrast to previously postulated belief, a substantial portion of vesicles do not only preserve their mobility on a molecular scale, but also increase motion and often travel to a new area on the plasma membrane immediately before the fusion. This prominent study has been published in the Proceedings of the National Academy of Science, one of the most respectable multidisciplinary journals in the world. Without a doubt, [the beneficiary's] research has made a significant contribution to the understanding of presynaptic mechanisms of exocytosis.

opines that "there are maybe only a few others in the U.S. research community who can match his level of expertise in fluorescent imaging of SNARE proteins interaction in synapses of central neurons."

The director determined that the petitioner had submitted qualifying evidence of original contributions of major significance in his field and we concur with that finding. The preceding experts, many of whom have not worked with the beneficiary, have not merely reiterated the regulatory language of this criterion, they have clearly described how the petitioner's scientific contributions are both original and of major significance in the field. Several of the experts have explained how they currently use the petitioner's findings in their own work. Moreover, in support of the preceding experts' statements, the petitioner submitted documentation showing approximately four hundred independent citations to his published findings. These citations are solid evidence that other researchers have been influenced by his work and are familiar with it. This evidence corroborates the independent experts' statements that the petitioner has made original contributions of major significance in his field. The record reflects that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists from around the world have acknowledged the value of the petitioner's work and its major significance in the neuroscience field.

(4) *Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media*

The record demonstrates that the beneficiary has published at least 22 full papers and over 30 abstracts in professional scientific journals. The director determined that the beneficiary meets the criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(6). The AAO concurs with this determination.

The petitioner has submitted evidence that meets the plain language of the specific regulations and therefore qualifies under three of the evidentiary criteria that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. See 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), (5) and (6). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise, pursuant to 8 C.F.R. § 214.2(o)(3)(iii). See *Kazarian*, 2010 WL 725317 at *3.

In 1992, the beneficiary received his Ph.D. from The Ukrainian Academy of Sciences and has demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). His publication record of at least 53 published articles and abstracts at the time of filing not only meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), his articles are consistently well-cited, with approximately 400 independent cites to his body of work as of the petition's filing date. See *Kazarian*, 596 F.3d 1115 at 1121 (citations may be relevant to the final merits determination of whether an alien is at the very top of his field). This citation record is also consistent with a determination that his original contributions of major significance, discussed in detail in the reference letters from scientists from several different countries, are consistent with national or international acclaim. The petitioner submitted reference letters from experts in the field, detailing the petitioner's specific contributions and explaining how those

contributions have influenced the field. Moreover, the petitioner has participated in the peer-review process for numerous journals. Thus, the petitioner's achievements are commensurate with sustained national or international acclaim at the very top of his field.

III. Conclusion

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the eight categories and established that the beneficiary has a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of thei[ir] field of endeavor" and has earned "sustained national or international acclaim." Therefore, the petitioner has established eligibility for the benefit sought under section 101(a)(15)(O)(i) of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.