

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: OCT 14 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss 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 a junior scientist for a period of three years.

On January 13, 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 criteria 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. The petitioner submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, we acknowledge that when we simply "count" the evidence submitted, the petitioner has submitted evidence relating to three of the categories of evidence as required. These criteria are judging the work of others, original contributions of major significance, and authorship of scholarly articles pursuant to 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(iv), (v) and (vi). As explained in our final merits determination,¹ however, much of the evidence that technically qualifies under some of those criteria reflects routine duties or accomplishments in the field that do not compare with the accomplishments of the most experienced and renowned members of the field. Thus, such evidence is not consistent with a finding that the beneficiary enjoys sustained national or international acclaim. As will be discussed further in our final merits determination, while we acknowledge the caliber of the references who support the petition, their accomplishments, editorial positions, and publication records only reinforce our conclusion that the top of the beneficiary's field is far higher than the level he has achieved.

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

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

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."

Although the director's decision pre-dates the *Kazarian* decision, 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).

In the present matter, the petitioner has submitted evidence pertaining to several of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of his field or that he has achieved sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. The Beneficiary's Eligibility under the Evidentiary Criteria

The beneficiary in this matter is a native and citizen of India. The beneficiary completed his medical training at ██████████ University in India in 2004 and received a Master of Science in Clinical Research from ██████████ University in Chicago, Illinois in 2008. The petitioner seeks classification of the beneficiary as an alien with extraordinary ability in the sciences. The petitioner indicates that the beneficiary is a "budding expert" in the field of adult stem cell research, and indicates that, as a junior scientist, he will be responsible for developing and testing a protocol to treat chronic liver diseases using injection of adult stem cells.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 1, 2009. The petitioner initially submitted a job offer for the beneficiary, the beneficiary's résumé, the beneficiary's publications and conference presentations, evidence of the beneficiary's peer review activities, evidence of the beneficiary's membership in professional associations, and testimonial letters. In response to a Request for Evidence ("RFE") dated August 28, 2009, the petitioner submitted supplemental testimonial evidence and other background information regarding the significance of the beneficiary's research, publications, conference presentations and peer review responsibilities.

On January 13, 2010, the director denied the petition, finding that the beneficiary meets only two of the eight regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). On appeal, the petitioner contends that the beneficiary meets at least one additional criterion, specifically, the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

After careful review of the record, it must be concluded that the petitioner has failed to establish the beneficiary's eligibility. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained" national or international acclaim and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

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).²

1. *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;*

² The petitioner has not claimed to meet or submitted evidence relating to the criteria not discussed in this decision.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In its initial letter dated May 28, 2009, the petitioner stated that the beneficiary "is a member of five important nationally recognized scientific societies which includes membership in the prestigious American Society of Nephrology, the leading organization of kidney scientists and doctors." The beneficiary's resume lists his membership in this society as well as the American Physician Scientists Association, the International Society for Stem Cell Research, the International Stem Cell Forum, and the American Association of Physicians of Indian Origin. The petitioner submitted proof of the beneficiary's membership in each of these associations.

In the RFE issued on August 28, 2009, the director requested evidence of the minimum requirements and criteria used to apply for membership in these associations and any conditions or requirements of membership as well as evidence that the associations rely on national or international experts who make determinations regarding membership. The petitioner's response to the RFE did not further address this criterion.

The director determined that the evidence submitted was insufficient to meet this criterion, as the petitioner failed to provide any evidence that the aforementioned associations are ones which require outstanding achievements of their members as judged by recognized national or international experts in the field. The AAO concurs with this determination and notes that the petitioner has not contested the director's finding that the petitioner did not submit evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

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.³

The beneficiary co-authored a scholarly article titled [REDACTED] which was published in the March [REDACTED] issue of the *World Journal of Gastroenterology*. The petitioner noted that this article describes "a novel method to regenerate the liver after it is damaged irreversibly by disease such as

³ 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.

cirrhosis or fibrosis," and was considered "a breakthrough in treating chronic liver diseases." The petitioner indicated that the published paper was announced by [REDACTED] a news service run by *Science*, "the most scholarly science journal in the USA and the world." In addition, the petitioner indicated that the announcement was relayed by 15 other national and international 'lay press' news agencies including the *Wall Street Journal* and *USA Today*. The petitioner provided evidence of the announcement of the WJG article on the websites of *Scientific American*, *Science Week*, *USA Today*, *The Wall Street Journal* and other on-line publications.

The media articles refer to the work performed by [REDACTED] and his colleagues from the Cook County Hospital in Chicago," and note that the study performed "is the first to demonstrate the unique role of the omentum in regenerating the liver."

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. The article published by [REDACTED] and relayed by other media sources does not mention the beneficiary by name; rather, it cites to his published article and credits [REDACTED] and his colleagues," of which the beneficiary was one, for the notable work. It cannot be credibly asserted that these articles are "about" the beneficiary.

In light of the above, while the evidence discussed above 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 provided evidence that the beneficiary, since August 2008, has been included in the database of reviewers for the *American Journal of Nephrology* and as such, he is asked to review manuscripts for the journal that fall within his area of expertise. The petitioner provided evidence that the beneficiary had been invited to review three manuscripts as of the date of filing.

Dr. [REDACTED] Associate Editor of the *American Journal of Nephrology*, explained the journal's peer review process as follows:

Each article is reviewed by one of the editors and two other experts in the field who are invited by the editor. The process of choosing the expert for the article is taken collectively by the editors.

[The beneficiary] has been working on experimental chronic kidney and liver diseases and their treatment using stem cells. Through this research he has become an expert on analytical techniques like polymerase chain reaction (PCR), gene and primer sequencing, protein estimation, tissue culture and mechanisms of chronic diseases.

cells from the regenerating liver tissue to see if he can regenerate the liver by injection of these cells.

Based on his research capabilities and presentations at local and national scientific conferences, I believe he has a promising future as a physician-scientist. I strongly recommend USCIS to grant [the beneficiary] the O-1 visa in light of his remarkable work on adult stem cells for the cure of chronic liver and kidney diseases.

In the RFE issued on August 28, 2009, the director acknowledged the testimonials submitted, but noted that all of the letters were submitted by individuals with whom the beneficiary has worked or collaborated. The director noted that in order to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), the petitioner should establish that the beneficiary's work has been adopted by other researchers or otherwise influenced the field of medicine.

In response to the RFE, the petitioner indicated that it sought the opinion of "outside peers who in their professional capacities were familiar with the progress of research in [the beneficiary's] field of interest (HIV, kidney and liver disease, stem cells)." The petitioner submitted five additional letters, including one from Dr. [REDACTED] MD, Associate Professor, Division of Cardiology, at the Northwestern University [REDACTED] School of Medicine. [REDACTED] states that she is familiar with the beneficiary's research based on his presentation on stem cell research at the American Federation for Medical Research annual meeting in 2009. Dr. [REDACTED] describes the beneficiary as "a pioneering researcher in the field of stem cells and liver regeneration," who "has made revolutionary advancements in this highly complex field." Dr. [REDACTED] further states:

The most important project that [the beneficiary] has developed is the use of omentum stem cells for liver regeneration. It is unambiguous that [the beneficiary's] method of activating the stem cells in the omentum and using those stem cells to regenerate the injured liver is a gigantic step towards that direction. This "one of a kind" published research paper has received much critical acclaim from the medical community. [The beneficiary] through this pivotal and exciting research work has introduced an important and innovative method that other researchers have begun to adopt for their organ regeneration work.

* * *

Along with the omentum stem cells and liver regeneration work described above, [the beneficiary] has played a key role in the development of another stem cell project. This involves isolation of adult stem cells from a tissue developed in response to an inert foreign body placed under the skin. This tissue is called granulation tissue and cells taken from this tissue have shown by him to be stem cells. He has already shown in publications that these granulation-tissue stem cells when injected via a peripheral vein have the potential to recognize and adhere to injured organs within the body. He was invited to present his research findings at the national meetings of Central Society of Clinical Research and the American Society of Clinical Investigation. His research in granulation tissue stem cells has received significant commendation and generated tremendous interest within the stem cell

research community. This is because it is now it will be possible to readily obtain massive number of stem cells from the patient's own body using his technique and use it as stem cell therapy for various diseases.

The petitioner also submitted a letter from Dr. [REDACTED] Professor Emeritus of Medicine at [REDACTED] University, [REDACTED] School of Medicine. [REDACTED] indicates that he is the editor of a new book "Dialysis – History, Development and Promise," the first edition of which will be published in the spring of 2010. With respect to the beneficiary, [REDACTED] states:

Having reviewed the stem cell work of [the beneficiary] I believe that his research has immense potentials [*sic*] to influence the current approach to treat chronic kidney disease. Therefore I have invited him to write a chapter in the above dialysis book. The chapter that the beneficiary will pen is titled 'Use of Stem Cells for Kidney Repair' in the 'Looking Into the Future' section of the book. It is through his research that I have judged [the beneficiary] and have deemed him to be one of the finest researchers in the field in the country.

[The beneficiary] has used two novel sources of adult stem cells in the body (the omentum and the skin granulation tissue) for the repair and regeneration of the kidney. Using the omentum, [the beneficiary] has shown that when he activates the stem cells in the omentum in the setting of an injured kidney[,] [t]he omentum can recognize this injury by itself and can fuse to the injured kidney. Within two weeks, he sees a regenerated kidney where the omentum was fused. His research findings show that this regeneration is mediated by the omentum stem cells and growth factors within the omentum. This is a landmark observation considering that until now it has been the dogma that an adult kidney could never be regenerated. Taking into account the value of this outstanding finding, [the beneficiary] was selected to present his research data at the American Society of Nephrology annual meeting held on November 4-9, 2008 in Philadelphia.

[REDACTED] notes that the beneficiary's "original research on the use of adult stem cells from the omentum and from the granulation tissue has ushered in new treatment strategies for kidney repair and regeneration."

Dr. [REDACTED] Clinical Professor of [REDACTED] also provided a letter in support of the petition. Dr. [REDACTED] indicates that he has "pioneered the development of the surgical technique of freeing the omentum . . . from the abdominal cavity with its blood supply intact and laying it over injured areas to heal spinal cord, brain injuries and other neurological disorders." Dr. [REDACTED] states that he has over 200 publications in the field of omental transposition surgery. With respect to the beneficiary, he states:

Although the procedure of using the omentum for spinal cord and brain disorders was pioneered by me to accelerate healing, [the beneficiary] has advanced this field further. By pre-activating the omentum and creating a deliberate injury in the organ for the omentum to fuse with the injured site, he demonstrated that the omentum could regenerate organs like the liver, a ground-breaking finding considering that the contemporary thought was that adult organs do not regenerate. It is from this viewpoint, not personal acquaintance, that I would

consider his work a 'breakthrough' in the use of omentum for medical therapy. Considering the significance of this work, the American Society of Gastroenterology selected [the beneficiary] for an oral presentation of his liver regeneration research in the Digestive diseases week 2009 Annual Meeting – an outstanding honor for a scientist considering that only 5% of submitted works are chosen for oral presentations in that Meeting.

To further advance the liver regeneration work and make the use of omentum more convenient, [the beneficiary] has developed a method of culturing stem cells taken from the omentum-liver fusion site. It will now be possible to use cells from the Petri dish to bring about repair and regeneration of the injured liver (stem cell therapy). This novel approach was recognized by the stem cell research community and [the beneficiary] was selected to present this work at several national conferences (American Society of Clinical Investigation, American Federation of Medical Research-Midwest section, Central Society of Clinical Research).

Dr. [REDACTED] goes to discuss the beneficiary's original research in use of omentum for kidney regeneration, noting that "other peers in the field soon realized the immediate clinical applicability of [the beneficiary's] procedures." He notes that the beneficiary was invited to describe his research findings in the medical journal *Translational Research*, "whose mission is to rapidly translate technologies from 'bench-to-bedside.'" Dr. [REDACTED] concludes by stating that the beneficiary's "contributions have resulted in new approaches to treat diseases previously considered incurable."

Dr. [REDACTED] Associate Clinical Professor in the Department of Medicine at the University of [REDACTED], [REDACTED] discusses the beneficiary's study of kidney disease in African American HIV patients, published in the *Journal of American Society of Nephrology* and presented at the 2008 Annual Meeting of the American Society of Nephrology. Dr. [REDACTED] states that "following publication of his findings, doctors now have a greater understanding for diagnosing early kidney disease in this patient sub-population so it can be aggressively treated." He further indicates that "the subsequent adoption of these findings has led to considerable improvement in the outcome for HIV patients at risk of kidney disease." Dr. [REDACTED] further discusses the beneficiary's work in kidney research:

[The beneficiary] has shown that the omentum has the propensity to recognize and fuse with an injured kidney and thereby delivering stem cells and growth factors to the injured kidney. In complex experiments using a model of Heymann nephritis he has shown that new kidney tissue is formed using the stem cells from the omentum. . . .These findings have had tremendous impact on the nephrology community because now it opens up the possibility of stem cell treatment for kidney diseases. [The beneficiary] is one of the very few stem cell researchers in the United States who has performed such complex and cutting-edge research in the field.

Finally, the petitioner submitted a letter from [REDACTED] Chief Medical Officer, [REDACTED] Health and Hospitals System. Dr. [REDACTED] indicates that the beneficiary, working with Dr. [REDACTED] conducted two separate clinical studies to evaluate the prevalence of kidney disease among the center's HIV patient population. Dr. [REDACTED] states:

[The beneficiary] designed a clinical study to measure the prevalence of microalbuminuria in patients with early HIV infections who had no gross symptoms of kidney failure. This novel approach could identify patients most at risk for renal failure. [The beneficiary] was selected to present his research at the 2008 annual meeting of the American Society of Nephrology. He also published his findings in the prestigious Journal of American Society of Nephrology.

In a separate study conducted at the CORE center, [the beneficiary] (with Dr. [REDACTED] and Dr. [REDACTED]) looked at the significance of the age in the prevalence of microalbuminuria in HIV patients. In research findings presented at the 2008 Infectious Diseases Society of America meeting (IDSA), it was clear that early kidney disease was more common in the older HIV population as compared to the younger HIV patients. These research results have led to the older HIV population being screened more thoroughly and treated more aggressively for kidney malfunction.

In my opinion [the beneficiary's] contributions in HIV-associated nephropathy have been seminal and have the potential to improve the care of HIV patients and prevent renal failure in these patients.

The petitioner submitted evidence that the beneficiary has presented his research on kidney disease in HIV-positive patients and omentum-induced regeneration of the kidney and liver, at a total of six annual conferences between October [REDACTED] and April [REDACTED]. In addition, the petitioner submitted evidence that the beneficiary had received invitations to submit manuscripts for potential publication in *Translational Research* and *Annals of Gastroenterology*.

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 AAO finds the letters submitted in response to the RFE particularly persuasive, as they were written by experts in the field with whom the beneficiary has not directly worked. We note that, while we typically look to citation histories in determining the significance of a beneficiary's contributions to the field, the beneficiary's most important research findings were published mere weeks prior to the filing of the petition. As such, we find the contemporaneous mention of his team's research findings in the mainstream press and the opinions of independent recognized experts to be indicative of the significant impact of the research in the medical and scientific community. Thus, the petitioner has submitted qualifying evidence pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

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

The beneficiary's resume lists a total of ten publications and abstracts. The petitioner provided a copy of the beneficiary's full-length article, "Activated omentum facilitates liver regeneration," co-authored with Drs. [REDACTED] and two others, which was published in the *World Journal of Gastroenterology* in May 2009. The beneficiary has also published abstracts in the *Journal of Investigative Medicine*, the *Journal of the American Society of Nephrology*, the *Journal of Infectious Diseases*, and *Gastroenterology*.

The director determined that the evidence submitted was insufficient to meet this criterion, noting that "the publication of scholarly articles does not necessarily indicate the sustained acclaim requisite to classification as an alien of extraordinary ability." The director observed that the petitioner did not provide a citation history for the beneficiary's articles or otherwise establish that the beneficiary "enjoys a measure of influence through his publications."

Upon review, the AAO finds that the evidence submitted satisfies the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) based on the beneficiary's publication of one scholarly article and five abstracts. The weight to be given to the beneficiary's body of published work will be considered below in our final merits determination.

However, the AAO notes that we will exclude from consideration any scholarly articles that have yet to be published. Three of the beneficiary's listed articles were submitted in manuscript form. The beneficiary indicates that one manuscript was submitted for publication and two were invited for publication in *Translational Research*. In addition, one of the beneficiary's abstracts was annotated "to be published in *Journal of Clinical Investigation* June 2009." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

(5) *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation*

The beneficiary's resume reflects that he has worked with the petitioning medical institute in various capacities since January 2005. He initially served as a "volunteer research fellow" from January 2005 until August 2006, then as a research fellow from September 2006 until June 2008, and as a junior scientist since August 2008.

The petitioner addressed this criterion in its response to the RFE. In a letter dated October 7, 2009, Dr. [REDACTED] stated:

Research at [the petitioning institute] (of Cook County Hospital, Chicago) has an international reputation for over one hundred years. Researchers at this institution were pioneers in establishing the concept of blood banking and were the first in the world to operate a blood bank. Recently, it also became the first in the world to establish a bank of frozen blood so that blood can be stored and made available for a longer time. Because of its excellent clinical research the institution was the first to establish a trauma center, and not surprisingly, it remains the best trauma center in the country (this was the reason that the institution was chosen as the setting for the TV show 'ER')The beneficiary is indeed in a key position as the only researcher in this institution working in the emerging new field of stem cells for regenerating organs (such as liver and kidney).

Dr. [REDACTED] further addressed the beneficiary's specific contribution in published papers with multiple authors, noting that, while experimental medical research is a team effort, "the experimenters have a greater credit in the

work than the theoreticians and assistants." He describes the beneficiary as "the main experimenter as well as a theoretician in his work," and states that he "clearly deserves a large part of the credit that accrues to the team."

To further address this criterion, the petitioner submitted a second letter, dated October 5, 2009, from Dr. [REDACTED] who states:

Stem Cell biology is an emerging science that has huge promise for mankind. This science is still in the preliminary phase of research and it will require the enormous endeavor of top quality researchers to reach its potential. Under the leadership of Dr. [REDACTED] [the petitioner] has been developing a stem cell research program since 2004 for the treatment of diabetes, kidney and liver diseases. I am very happy to state that [the petitioner] is among the few medical research centers in the country having a focused adult stem cell and regenerative medicine research program.

The beneficiary joined the group as a stem cell researcher in 2006. Since then he has primarily developed the research program of liver regeneration using stem cells from the omentum. . . . His research is backed by several original publications, presentations at national and international scientific meetings.

[The beneficiary] is the lead researcher responsible for ongoing experiments of using the omentum stem cells to treat various types of chronic liver disease including alcoholic liver disease, cirrhosis. He is also a crucial member of the small scientific team working towards the treatment of chronic kidney disease. Both the liver and kidney are vital research areas because of the high death rates associated with chronic liver and kidney diseases. It is therefore essential for [the beneficiary] to continue this line of research at [the petitioning institution].

In that regard, [the petitioner] regards [the beneficiary's] position as a Medical Scientist critical to achieving the goal of finding a stem cell cure for both chronic liver and chronic kidney diseases.

The director concluded, without discussion, that the petitioner submitted evidence that meets this criterion. The AAO disagrees and will withdraw the director's finding. As noted above, the AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

We have already acknowledged the beneficiary's contributions to his field above. At issue for this criterion, according to the plain language of 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) are the positions the beneficiary was selected to fill and the reputation of the organization or establishment that selected him. We acknowledge the distinguished reputation of the petitioning medical institution.

However, while the beneficiary has clearly been able to provide expertise in a medical research area in which there may be a paucity of qualified researchers, there is no evidence that his roles as research fellow and junior scientist have been essential or critical for the petitioner's medical institute as a whole. A research fellowship is designed to provide research training for a future professional career in the field of endeavor. The petitioner's evidence does not demonstrate how the beneficiary's research fellowship role differentiated him from the other fellows at the institution let alone from its tenured faculty. The documentation submitted by the petitioner does

not establish that the beneficiary was responsible for the petitioner's success or standing to a degree consistent with the meaning of "essential or critical capacity."

The beneficiary is currently a junior scientist within the petitioning institution. Without an organizational chart or other evidence documenting how, as a junior member of Dr. [REDACTED] research team, the beneficiary performs a leading or critical role or how junior scientists fit within the general hierarchy of the petitioning institution, we cannot conclude that the petitioner has submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The fact that the beneficiary may have served as the main experimenter or lead researcher in one or more experiments that resulted in a co-authored publication does not elevate his position within the institution above that of a junior scientist for the purposes of this criterion.

While counsel, the petitioner, and the expert testimonials have attested to both the critical role the beneficiary fills within the petitioner's institution due to a scarcity of researchers with expertise in adult stem cell research, and the critical nature of the beneficiary's research from a national interest and medical advancement standpoint, these considerations go beyond the scope of this evidentiary criterion, which must focus on the beneficiary and the relative importance of his positions within the scope of the organizations that have employed him.

In light of the above, the petitioner has not submitted evidence that meets the plain language requirements of 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

(6) Summary

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.

As stated above, the record reflects that the beneficiary had, as of the date of filing, reviewed a total of three articles for *The American Journal of Nephrology*, thus satisfying the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The extent and nature of the petitioner's judging experience, however, is a relevant consideration as to whether the evidence is indicative of the beneficiary's national or international acclaim. See *Kazarian*, 2010 WL 725317 at *5.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field

who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's limited judging experience is indicative of or consistent with national or international recognition.

In reaching this conclusion, we acknowledge the petitioner's specific objection to the director's determination that "peer review is an obligation of scientists in the field." The petitioner submits a letter dated March 3, 2010 from Dr. [REDACTED] of the *American Journal of Nephrology*, who states that "peer-review work is an important process in the research enterprise and surely only a small percentage of scientists attain the status of peer-reviewers in their careers." Dr. [REDACTED] reiterates that he selected the beneficiary as a peer reviewer because he is a person "of distinction" in his field.

It should be emphasized that the AAO does not question Dr. [REDACTED] reasons for personally selecting the beneficiary as a peer reviewer for the *American Journal of Nephrology*. The beneficiary is clearly a very talented scientist and researcher and is more than qualified to perform such duties. However, he has served as a peer reviewer for only three articles during the course of his career, and has reviewed articles for a single journal. While it may be true that not every scientist has an opportunity to serve as a peer reviewer, the AAO finds insufficient support for a finding that any peer review experience places a beneficiary among the small percentage of scientists at the very top of the field. The beneficiary's experience may distinguish him from other junior scientists who have not yet been invited to review the work of their peers. However, the petitioner must distinguish the beneficiary from all scientists in his field, including those who regularly review articles for multiple scholarly journals and sit on editorial boards.

We acknowledge that the petitioner has published several articles and abstracts as a biomedical researcher in 2008 and 2009. The Department of Labor's Occupational Outlook Handbook, 2010-2011 Edition (accessed at <http://www.bls.gov/oco/ocos047.htm> on October 1, 2010 and incorporated into the record of proceeding), provides information about the nature of employment as a biological scientist and the requirements for such a position. The handbook expressly states that a "solid record of published research is essential in obtaining a permanent position involving basic research." This information reveals that published research does not set an individual apart from other biological scientists employed in that researcher's field.

That said, we acknowledge the positive response in the field to the petitioner's research articles that he coauthored with his supervisor Dr. [REDACTED] and other members of the petitioner's research team, and the response to his conference presentations. We are not persuaded, however, that his contributions, presented in his well-received publications and presentations, rise to the level of sustained national or international acclaim in the context of his field. All of the beneficiary's notable work was published or presented in the year preceding the filing of the petition, with the most significant work published only weeks before the petition was filed, and no citation history has been provided. While there is evidence of significant interest in the beneficiary's work in the form of testimonial evidence from experts in the scientific and medical communities, it would be premature to conclude that the beneficiary, as of June 2009, was widely recognized as one of the top scientists in his field.

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. The beneficiary is a junior scientist who relies primarily on three manuscript reviews in the widespread peer-review process, his limited publication record, the praise of experts in his field, and the affirmation of his colleagues that he is important to the laboratory where he now works in an inherently subordinate position.

As noted by the petitioner, many of the beneficiary's references' credentials are impressive. For example, Dr. [REDACTED] has held the position of Director of Dialysis at [REDACTED]. He is an Associate Editor of [REDACTED], a member of the editorial board of the *American Journal of Nephrology*, and has served as a referee for seven scientific journals. Dr. [REDACTED], M.D., is Chief of Nephrology at the [REDACTED]. He is editor-in-chief of [REDACTED] *A Current Survey of World Literature*, associate editor of the *American Journal of Nephrology*, and, according to his resume, has published 249 peer-reviewed articles.

Dr. [REDACTED] is currently the [REDACTED] Division of Nephrology-Hypertension at [REDACTED]. Executive Director and President of the [REDACTED], a Professor of Medicine at the University of Illinois, and Medical Director of the Chicago [REDACTED]. According to his resume, he is an elected fellow of the [REDACTED] College of Physicians [REDACTED] and the American Society for the Advancement of Science. He is a regular medical correspondent for the *British Medical Journal*, the North American editor for the *International Journal of Artificial Organs*, co-editor of [REDACTED] *A Current Survey of World Literature*, a member of the editorial board of [REDACTED] and co-editor of *The Oxford Illustrated Medical Companion, 3rd Edition*. His resume lists 142 scientific publications and numerous books and book chapters.

Dr. [REDACTED] is Principal Scientist with the petitioning organization. He serves on the editorial board of the *American Journal of Nephrology*, and *Kidney: A Survey of World Literature*, and is a regular reviewer for seven scientific journals, in addition to reviewing grants for the National Kidney Foundation of Illinois. Dr. [REDACTED] resume lists 84 peer-reviewed publications.

Dr. [REDACTED] is Professor Emeritus of Medicine at [REDACTED]. As noted above, he has been a member of the editorial boards of seven scientific and medical publications. According to his resume, he has received awards from the National Kidney Foundation, American Kidney Fund and American Association of Kidney Patients. Dr. [REDACTED] was also the founding president of the International Society for Hemodialysis, and has held executive committee membership and chair positions for the National Kidney Foundation, American Society of Nephrology and other organizations. He has published 251 articles and edited several books.

While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary in order to establish that he is qualified for the classification sought, it appears that the very top of the beneficiary's field of endeavor is well above the level he has attained. In contrast to these references, the petitioner has not established that the beneficiary's achievements at the time of filing the petition were commensurate with sustained national or international acclaim in the biomedical research field, or that he is among the small percentage at the very top of the field of endeavor.

III. Conclusion

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

Nothing in the decision of the AAO should be seen as an attempt to minimize the accomplishments of the beneficiary, particularly since they have been achieved so early in his career, or as a comment on the criteria used by the petitioner to select persons for positions. Indeed, as many of the testimonial letters make clear, the beneficiary shows great promise and potential in the field of stem cell research, and was appropriately described by the petitioner as a "budding expert" in his field. This denial does not preclude the petitioner from filing a new immigrant or nonimmigrant visa petition, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

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

ORDER: The appeal is dismissed.