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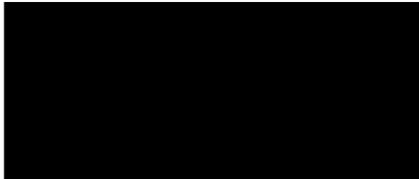
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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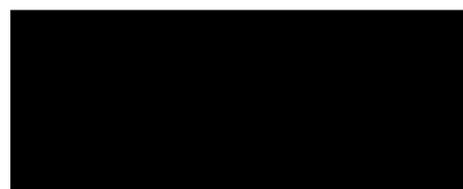
Office: NEBRASKA SERVICE CENTER

Date **AUG 04 2010**

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

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

ON BEHALF OF PETITIONER:



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

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, counsel argues that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3), and thus qualifies for the classification sought. For the reasons discussed below, we uphold the director's decision.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

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

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

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In 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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

This petition, filed on May 13, 2008, seeks to classify the beneficiary as an alien with extraordinary ability in the computer science field of web mining and link analysis. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).²

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

The petitioner initially provided an email, dated January 28, 2005, indicating that the beneficiary's submission, "Incremental Page Rank Computation on Evolving Graphs," was "not accepted for presentation at the conference as a full paper. However, [his] paper has been accepted for poster presentation." The petitioner also submitted internet pages from www.2005.org indicating that 117 submissions for the poster track were received and that 67 were accepted. This website also confirmed that the beneficiary was awarded the poster track for his submission, which was the joint effort of four computer scientists. Additionally, web pages regarding conferences in China and Japan were submitted, where the beneficiary's submission was allegedly presented. However, this evidence does not specifically reference the beneficiary's submission. Nonetheless, the petitioner also provided various reference letters that support the claim that the beneficiary presented his submission at these conferences. For example, [REDACTED] Professor of Information [REDACTED] indicated that the beneficiary had an "invitation(s) to present at two of the field's major conferences" including the World Wide Web Conference in 2005. Another reference letter from [REDACTED] Chair of Engineering at the University of Texas, indicated that the beneficiary's "Incremental Page Rank" paper was "presented in the highly regarded World Wide Web Conference (2005)." Additionally, the petitioner submitted reference letters which referred to the beneficiary's involvement in presenting at the IEEE/ACM Conference on Web Intelligence in 2005.

The director's Request For Evidence ("RFE") requested additional evidence for this criterion. In response to the RFE, the petitioner provided additional information regarding its Department of Defense grant. The petitioner supplemented the record with a reference letter from [REDACTED] from Infobionics, dated April 17, 2009, who stated that the petitioner would not have "received this award without [REDACTED] innovative and extraordinary scientific skills." The petitioner also provided the solicitation announcement from the Department of Defense for this "Small Business Innovation Research Program" grant, which includes instructions, background and evaluation information. The initial report (Part I), with [REDACTED] name on it, that was provided to the Department of Defense

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

⁵ The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the acknowledgement that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces USCIS's conclusion that publication of scholarly articles is not presumptive evidence of sustained national or international acclaim.

was also submitted. The second report, Part II, was also submitted and clearly named Carl Bonta as the "principal investigator." The actual grant contract was also provided.

In his decision, the director found that the beneficiary's participation in presentations at conferences is "more applicable to the authorship criterion since it involves the dissemination of the petitioner's scholarly work." In addition, the director's decision indicates that the evidence provided regarding the petitioner's federal grant was not sufficient to support that it was a "lesser nationally or internationally recognized award" for excellence in the computer science field. Moreover, the director notes that the "award" was not specifically given to the beneficiary, but instead it was given to the petitioner.

On appeal, no additional evidence was provided. However, the petitioner argued that,

"on account of [redacted] research, Infobionics was selected as a semi-finalist out of nearly 900 entrants at the [redacted] competition and recognized by the Heartbeat of America for its defense related research and development."

Additionally, the petitioner disagreed with the director that presentations should not be considered under this criterion. Further, the petitioner argued that it established the Department of Defense grant as an award for excellence, stating that only "one in three companies (were) awarded the Dod grant," referring to a letter from [redacted]

As it relates to the petitioner's claim that it was selected as a semi-finalist out of nearly 900 entrants at the [redacted] competition and recognized by the Heartbeat of America, the only evidence submitted to support this claim included a letter from [redacted] in response to the RFE, which was provided to show that the beneficiary had played a leading or critical role for an organization. Regardless, as the competition appears to have been limited to that state of Minnesota, any prize awarded cannot be considered a nationally or internationally recognized prize or award.

The petitioner failed to submit sufficient evidence to demonstrate that the presentations or the grant given to the petitioner constitute nationally or internationally recognized prizes or awards. Without other documentation about the awards such as evidence regarding their prestige, selection process or candidates that the petitioner was competing against, the petitioner failed to establish the national or international recognition of these awards. In addition, all the evidence provided regarding the federal grant indicates that [redacted] was responsible for the proposals. The beneficiary's name is not written on either report made to the government. While [redacted] credits the beneficiary for his work and the grant proposal may have been a collaborative effort, this criterion cannot be satisfied without providing evidence showing the exact role and involvement of the beneficiary and an explanation as to why his name was not even included in either of the two reports given that the plain language requires the alien's "receipt" of the prize or award.

We agree with the director that presentation evidence is not the appropriate evidence for this criterion. Nonetheless, even if the beneficiary's presentations could be considered awards, which we do not, they cannot be considered nationally or internationally recognized prizes or awards for

excellence. With regard to the beneficiary's submission of the "Incremental Page Rank Computation on Evolving Graphs," the beneficiary's paper was not accepted as a full paper for presentation, but rather as a poster presentation. Over half of the contestants who entered the poster presentation were accepted. As the beneficiary was one of 67 applicants out of 117 "awarded" with a poster presentation, it is not clear how such acceptance may be considered national or international recognition for such an award. With regard to the other presentations, no information was provided regarding the other computer scientists who submitted papers. Moreover, no independent evidence was submitted, aside from reference letters, to confirm the beneficiary's involvement in these presentations.

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

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

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

The petitioner initially provided internet pages from Google Scholar to indicate citations were made to the beneficiary's articles. In his RFE, the director requested evidence of articles that were written about the beneficiary's work. In response to the RFE, the petitioner submitted a letter from Professor [REDACTED] from the University of Minnesota indicating that the citations to the beneficiary's work demonstrate his substantial contribution in his field. On appeal, no new evidence was submitted. The petitioner, in his appeal brief, argued that the evidence on the record was sufficient to meet this criterion.

The plain language of this regulatory criterion requires that the published material be "about the alien." This list of citations provided fails to support that published material exists "about the alien." Instead, the articles which the petitioner provided citing the beneficiary's work are about the authors' work, not the beneficiary's work. While citations are not irrelevant and will be discussed later in this decision, they cannot serve to meet this criterion.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

The petitioner submitted various emails to the beneficiary requesting his review of papers. The petitioner did not submit any reviews conducted by the beneficiary in response to these emails. In fact, one of the emails provided is a forward of a past email requesting the beneficiary's review, which indicated that such a request was made two weeks ago without any reply. However, lists of "2003 Reviewers" and "Non-Program Committee Reviewers" for 2003 and 2004 were provided, naming the beneficiary as a reviewer. Information regarding the 1st European Web Mining Forum in 2003, which listed the beneficiary as a secondary reviewer, was provided. The petitioner also provided a list from Google Scholar with citations to the beneficiary's articles. However, only one of the three citations mentioned the beneficiary, stating that he "help (helped) in preparing these slides." The petitioner additionally referenced a recommendation letter which he claims is evidence for this criterion.

The director, in his RFE, requested additional evidence, such as the criteria for selection as a panelist. In response to the RFE, the petitioner provided the following as evidence:

1. An acknowledgement letter from the Editor-in-Chief of the International Journal on Artificial [REDACTED] which confirms the beneficiary is a reviewer for the journal because of "his expertise in the area of data mining, especially in web mining and knowledge extraction,"
2. Internet pages from [REDACTED], which indicate that "[REDACTED] publishes high-quality, original research papers as well as state-of-the-art surveys,"
3. A letter from [REDACTED] which explains the criteria for selecting the beneficiary as a lecturer,
4. A letter from [REDACTED] from the [REDACTED] which explains the criterion that the [REDACTED] used to select the beneficiary as a "peer reviewer," that included a demonstrated breadth of knowledge in the specialty area, a reputation for significant contributions to the science field, a number of relevant publications as well as years of recognized expertise, previous publications and/or presentations as well as years of recognized expertise and a general recognition of extraordinary ability within the specialty field of science,
5. An internet page from Web Mining and Usage Analysis indicating that the beneficiary co-authored a paper that was accepted for the [REDACTED]
6. A research profile indicating the beneficiary's thesis, articles, book chapters, reports, presentations and journals and conferences in which he acted as a reviewer, and
7. A list, from an unknown source, of publications by the beneficiary.

It is worth noting that much of the evidence provided in response to the RFE failed to support this criterion and was clearly extraneous. For example, the letter from [REDACTED] of [REDACTED] (item 3), explaining how the beneficiary was chosen as a lecturer, has nothing to do with being a judge. Additionally, the internet page from Web Mining and Usage Analysis indicating that the beneficiary co-authored a paper that was accepted (item 5) and the list of the beneficiary's publications (item 7) do not provide any insight into how the beneficiary may have acted as a judge of others.

No new evidence was submitted on appeal. However, the petitioner argued that the beneficiary had fulfilled this criterion stating that [REDACTED] outlines the criteria (item 4) necessary for a peer reviewer to satisfy before he or she can judge others written work.

Although not all the evidence provided for this criterion is applicable, the petitioner has provided sufficient evidence to establish that the beneficiary meets the plain language of this criterion.

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

The petitioner provided various recommendation letters mainly from colleagues and other professors. No new evidence for this criterion was provided on appeal. However, the petitioner argued in its brief that "USCIS failed to consider other evidence in the record." We have considered all the evidence in the record, and agree with the director that the petitioner has not satisfied this criterion.

The burden is on the petitioner to establish the significance of the beneficiary's work. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that the beneficiary's work is novel and useful, but also that it had a demonstrable impact on his field. The petitioner has not shown, for instance, how the field has changed as a result of the beneficiary's work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research.

The reference letters provided by the petitioner are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances. Further, the petitioner mainly cited to its own reference letter with respect to this criterion. However, the beneficiary's own employer and those with whom he has previously studied, with or worked for cannot objectively demonstrate that the field as a whole is aware of the petitioner or his work.

As it relates to the remaining letters, while the writers attest to the beneficiary's publications and research and generally affirm the petitioner's outstanding contributions, none of the letters provides specific details to establish how the beneficiary's work has contributed significantly to his field. For instance, while Bing Liu asserts that the beneficiary "has continued to contribute novel and pivotal research work," he fails to explain how the beneficiary's work is currently being utilized and therefore how it can be considered a significant contribution. [REDACTED] describes how the beneficiary provided a "novel approach" to a computational technique and "improved on the already effective pagerank algorithm," claiming these methodologies were "a pivotal contribution," but provided no examples of how they are currently being used in the field. Similarly, while [REDACTED] attests to the beneficiary's "seminal work on mining information from the evolving nature of the Web," and his follow-up work with "breakthrough algorithms," [REDACTED] does not describe how the algorithms are currently being used in the field.

As discussed above, although the beneficiary is credited with “novel,” “groundbreaking,” and “pioneering” work, his references fail to establish how the beneficiary’s work has influenced his field and how he is considered to have made a contribution of major significance to his field.

With regard to the beneficiary’s published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. It is noted, however, that while the citation evidence submitted by the petitioner from Google Scholar demonstrates that the beneficiary’s work has been moderately cited, this level of citation is not sufficient to demonstrate that his work equates to original contributions of major significance in the field. We will fully address the beneficiary’s published and presented work under the next criterion.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the evidence indicates that the beneficiary performed admirably on the projects to which he was assigned, the submitted documentation does not establish that he has made original scientific contributions of “major significance” in his field. For example, the record does not indicate the extent to which his work has impacted others in his field nor does it show that the field has significantly changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the submitted letters are all from individuals with whom the beneficiary has interacted. While such letters are important in providing details about the beneficiary’s role in various projects, they cannot by themselves establish his contribution beyond his immediate circle of professional contacts. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. Thus, the content of the writers’ statements and how they became aware of the beneficiary’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a computer scientist who has made original contributions of major significance. Without supporting evidence showing that the beneficiary’s work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted the following evidence:

1. A paper co-authored by the beneficiary entitled, [REDACTED] on "Evolving Graphs," without a date or publisher referenced.
2. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
3. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
4. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
5. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
6. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
7. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
8. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
9. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced,
10. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced.
11. A paper co-authored by the beneficiary entitled, [REDACTED] without a date or publisher referenced, and
12. A chapter co-authored by the beneficiary, which appears to be the same paper from item 8, without a date or publisher referenced.

The record also contained citations to some of the beneficiary's articles. In response to the RFE, the petitioner submitted a reference letter from [REDACTED] from the [REDACTED], a supervising professor of doctoral candidates, who stated that beneficiary has published more than most doctoral students and such prolific publishing demonstrates "a level of excellence and expertise unique in the field." The petitioner also submitted a paper that the beneficiary co-authored, entitled "Mining Temporally Evolving Graphs," as well as internet pages indicating that it was accepted and then incorporated into the final program for a conference on Knowledge Discovery and Data Mining in 2004.

On appeal, no new evidence was submitted. However, the petitioner's brief reiterates the evidence already submitted and points to many of the reference letters provided to support its claim. For example, it cites to Professor Kumar's letter which stated that the beneficiary's publications "exceeded the average scientist."

The petitioner failed to meet the plain language of the regulation and to sufficiently demonstrate that the beneficiary's articles were published in professional or major trade publications or other major media. None of the articles provided indicate the publisher. The only reference made to publishing appeared to be found in the Google scholar citations provided in a printout and in the one article that was "published" at a conference. We note that the list provided from Google scholar does not correspond to the articles submitted. Without specific information regarding where the beneficiary's articles were published the petitioner has failed to establish that the beneficiary has authored scholarly articles in professional or major trade publications or other major media.

As such, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner, in its initial brief, claimed that the beneficiary performed a critical role at Infobionics. The petitioner cited to three reference letters. One letter was from [REDACTED] an inventor at Infobionics, who discussed how the beneficiary's skills would be utilized by the company. [REDACTED] described the various ways that the beneficiary's skills "will" be very useful to the company. The other two letters were both written by [REDACTED] the CEO. One of them was a reference letter and the other an offer letter which included the terms of the beneficiary's employment.

In response to the RFE, the petitioner provided a letter from [REDACTED] explaining how the beneficiary's participation resulted in the Department of Defense grant to the petitioner. The petitioner additionally provided information regarding the grant that was previously submitted to establish that the beneficiary had received a lesser nationally or internationally recognized award for excellence. This re-submitted evidence included the solicitation for the grant, grant information, two reports drafted by [REDACTED] and the confirmation of the grant award from the government. In addition, the RFE pointed to the reference letter written by [REDACTED] who credits the beneficiary for the petitioner's placement in the semi-finals of the [REDACTED] in 2008 and the feature in Heartbeat of America.

On appeal, no new evidence was provided. Nonetheless, the petitioner continued to argue that the beneficiary fulfilled this criterion pointing to the previously submitted evidence. In addition, the petitioner cited the reference letter from [REDACTED] who stated that the beneficiary "plays a leading, critical and absolutely essential role for our company."

The director found that the petitioner failed to satisfy this criterion, and we agree. In order to establish that the beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment. While the petitioner provided various reference letters and materials regarding the federal grant, the evidence was not sufficient to meet this criterion. It is unclear how the beneficiary played a leading role for the federal grant because his name was not even included in the proposals. We note that it is

██████████ who is the principal investigator and oversees the grant project. Without evidence which differentiates the beneficiary, from others within Infobionics, including executives and ██████████ who appears to be the beneficiary's supervisor, it is unclear how the beneficiary's role is leading or critical to the petitioner. In addition, as previously indicated, the evidence also fails to outline the beneficiary's actual role in any of the awards credited to the beneficiary. Moreover, the reference letter from ██████████ failed to show how the beneficiary performed a leading or critical role. Rather, his letter discussed how the beneficiary's skills would be utilized.

Finally, the petitioner submitted insufficient evidence to demonstrate that it has a distinguished reputation. Although Infobionics provided evidence of its patents, its relationship with other entities including its funders and some of its achievements, such evidence failed to prove that it enjoys a distinguished reputation. Such evidence merely demonstrates that the business has developed original ideas and has been successful.

As such, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a letter from ██████████ Chairman and CEO of Infobionics, dated April 25, 2008, stating that the beneficiary's salary will continue to be "at or above \$90,000." In response to the director's RFE, the petitioner provided a W-2 Wage and Tax Statement for 2008 indicating that his wages were approximately \$75,000 per year. In addition, both a reference letter and the petitioner's brief, claims that the beneficiary earned a bonus of \$30,000. However, the year this bonus was given is unclear, as such bonus is not reflected in the beneficiary's W-2. The petitioner also provided an internet printout from www.flcdatabcenter.com, an Online Wage Library, which indicated that the wages for computer and information scientists range from \$65,978 to \$135,242 per year. More specifically, the Level 4 (fully competent) median wage for computer and information scientists was \$135,242 per year.

Even if we consider the bonus that was not documented by independent evidence, such as a W-2, the beneficiary's salary would still fall well below the median salary of \$135,242 per year earned by fully competent computer and information scientists. Therefore, there is no indication that the beneficiary has commanded a high salary in relation to others in the field.

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

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Comparable Evidence

Counsel argues that the beneficiary's participation and/or presentations at conferences are comparable evidence of the petitioner's extraordinary ability in computer science. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

C. 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) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120.

In this case, the specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner submitted documentation relating to the petitioner's achievements in computer science. The submitted evidence, however, is not indicative of the petitioner's national or international acclaim and there is no indication that his individual achievements have been recognized in the field.

Although we have found that the beneficiary satisfies the plain language of the criterion related to the beneficiary's participation as a judge of the work of others pursuant to 8 C.F.R. § 204.5(h)(3)(iv), we find that as peer review is routine in the field, evidence of the beneficiary's participation as a judge must be evaluated with regard to whether such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top researchers and/or scientists is of far greater probative value than judging a local competition for youth or novices. In this instance, the petitioner has not shown that the beneficiary has reviewed an unusually large number of articles or has served in an editorial position for a distinguished journal in order to establish he is one at the very top of his field and has the requisite sustained national or international acclaim.

The petitioner provided evidence regarding the beneficiary's review of various submissions for journals and conferences. However, the record lacks evidence establishing the level of prestige associated with reviewing these journal entries, the requirements necessary to become a reviewer for submissions, and the levels of expertise of the candidates who submitted manuscripts. In response to the RFE, the petitioner provided a letter from [REDACTED] (item 4 above), who listed several criteria required for being selected as a reviewer. However, such criteria were very broad and could relate to many scientists. Additionally, one of the criteria, a general recognition of extraordinary ability within the specialty field of science, appears to use the same language as the statute. Nonetheless, the evidence still fails to provide any specificity regarding the journals in which the petitioner judged, aside from item 2 (above) which is extremely broad and general as well. Moreover, the record lacks evidence showing, for example, that the beneficiary's activities involved judging top scientists at the national level or that his position as a reviewer was otherwise consistent with sustained national or international acclaim at the very top of the field.

Further, as authoring scholarly articles is inherent to the research field,⁵ such as the instant case where the beneficiary was a doctoral candidate and now works in the research field, we evaluate a citation history or other evidence of the impact of the beneficiary's articles when determining their significance to the field and whether the beneficiary is one at the very top of his field and enjoys sustained national or international acclaim. The petitioner failed to provide any of the articles in which the beneficiary's articles were cited to, and instead provided a list from Google Scholar. This list from Google Scholar was considered, although the petitioner did not specifically provide it for this criterion. As the articles that cite to the beneficiary's work were not provided, the petitioner failed to demonstrate that the beneficiary's articles were frequently cited in a manner consistent with sustained national or international acclaim. The fact that the petitioner's publications allegedly exceed that of an "average scientist" is not enough to satisfy this criterion. Therefore, although the beneficiary has purportedly authored many articles, this is expected of anyone working in this field. There is also no evidence that his articles have resulted in sustained national or international acclaim in his field. Further, with regard to the evidence submitted for 8 C.F.R. § 204.5(h)(vi), the petitioner has not established that the beneficiary's authorship of scholarly articles demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to science and engineering research, we will evaluate a citation history or other evidence of the impact of the beneficiary's articles to determine the impact and recognition the beneficiary's work has had on the field and whether such influence has been sustained.⁶ For example, numerous independent citations

⁶ For instance, with regard to research in a university setting, the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on August 3, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS' position that publication of scholarly articles is not automatically evidence of sustained national or international acclaim; we must consider the field's reaction to those articles.

for an article authored by the beneficiary would provide solid evidence that the beneficiary's work has been recognized and that other researchers have been influenced by his work. On the other hand, few or no citations of an article authored by the beneficiary may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted evidence showing that the beneficiary's articles have been only moderately cited. While these citations demonstrate some interest in his published and presented work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Finally, with regard to the evidence submitted for 8 C.F.R. § 204.5(h)(ix), the beneficiary's salary is not commensurate with one who is at the very top of his field. Even if the petitioner were to submit evidence showing that his salary exceeded the fully competent (Level 4) median wage, which he has not, we note that "median" regional wage statistics submitted from www.flcdatacenter.com are not an appropriate basis for comparison in determining whether an individual's salary places him among that small percentage at the very top of the field. The median regional wage statistics submitted by the petitioner show what salary levels fall within the top half of his field on a regional basis rather than demonstrating the salary level commanded by those in that small percentage at the very top of the field.

Moreover, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. The petitioner failed to provide evidence for any of these engagements regarding the type of audience who attended these presentations, the number of attendees, or the selection criteria for the presenters. At best, these presentations are comparable to the publication of an article in a scholarly journal or original contribution of major significance, as it amounts to the dissemination of technical information to a specialized audience. As such, the evidence does not demonstrate that the beneficiary's participation in these conferences conveyed national or international acclaim or that his participation in such events made a contribution of major significance to his field. While the presentations may attest to his originality, the record lacks evidence of the impact his work has had on the field as a whole. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

When compared to the accomplishments of individuals who submitted recommendation letters on the beneficiary's behalf, it appears that the highest level of the beneficiary's field is far above the level he has attained. For example, Bing Liu has served on the editorial board of 4 journals, and has served and currently serves as program chair and vice chair of leading data mining and Web mining

conferences. [REDACTED] has more than 70 journals, refereed conference papers, and book chapters. [REDACTED] has published more than 200 refereed papers, co-edited 12 books, and is an associate editor of three publications. [REDACTED] claims to have been at the forefront of research as “one of the researchers who initiated and introduced Web mining” and is “among the top 5 authorities in the [w]orld in Web mining.”

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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 and 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 the beneficiary’s eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff’d*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.