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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 013 53001

Office: NEBRASKA SERVICE CENTER

Date: OCT 22 2008

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, 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 with a finding of fraud and material misrepresentation.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On April 24, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted a falsified recommendation letter in support of his petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.”

Regarding the fraudulent submission, the AAO’s notice stated:

[Y]ou submitted a January 8, 2007 letter of support allegedly issued by [REDACTED] University. Based on irregularities found in the January 8, 2007 letter, it was submitted to [REDACTED] for verification. On April 9, 2008, the AAO received a response from [REDACTED] stating: “I must admit that the letter you have FAXed for my examination is not my own. I did send a recommendation at an earlier stage in [the petitioner’s] application process, but this follow-up letter is a forgery.” By submitting a falsified recommendation letter, it appears you have sought to obtain a visa by fraud and willful misrepresentation of a material fact.

With regard to the fraudulent recommendation letter, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

If you choose to contest the AAO’s finding, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancies discussed above. If you do not submit such evidence within the allotted thirty-day period, the AAO will dismiss your appeal.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit the original of a September 25, 2005 “Appointment Letter” inviting him to join the editorial committee of *Natural Products Research and Development*. In addition to the original document, the petitioner was requested to submit contact information for the author of the appointment letter.

In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 30 days (plus 3 days for mailing) in which to respond to the AAO’s notice. In response, the petitioner submitted the

original, unaltered September 25, 2005 appointment letter and contact information for its author. The petitioner also submitted an April 28, 2008 letter from present his attorney of record, who stated that one of his employees was responsible for the submission of the fraudulent letter.¹ The attorney of record provided the following explanation:

[The petitioner] denies any fraud and willful misrepresentation. Based on communications between [the petitioner] and [REDACTED], it is clear that [REDACTED] does now recall sending the second letter of recommendation dated 1/8/07. He simply did not include in his original letter the following typewritten words: "I am regarded one of the nationally and internationally recognized experts in [REDACTED] fields of research, and therefore qualified to comment on the requirements of these societies and their members."

I also recall that when I was forwarded by e[-]mail [REDACTED] support letter for comments in January 2007, I was on a business trip in Shanghai and Guangzhou, China. I proposed that the letter, excellent though, would better contain a sentence indicating [REDACTED] qualification to write about [REDACTED]. Over international long distance calls, I asked my assistant in NY (1) to write down or type in some suggested additional words on a photocopy of the letter to the above effect, and (2) to ask the writer, through our client, what he would think.

Unfortunately, with the deadline for appeal approaching, my assistant must have forgotten to relate the suggested additional sentence to [REDACTED] or [the petitioner]. As our file contains two versions of the letter, one with and one without the suggested additional typewritten words, my assistant must have mailed out the appeal with the wrong version of the letter by mistake, a mistake that I did not realize to have been made until I read your letter of 4/24/2008.

We cannot ignore that counsel, rather than any unnamed assistant, signed the Form I-290B, Notice of Appeal to the AAO, which was dated January 13, 2007 and filed on January 16, 2007.² Counsel also signed the January 13, 2007 cover letter for the appellate submission and the accompanying appellate brief that cites the January 8, 2007 letter of support from [REDACTED]. Further, there is no evidence that any other party was involved in the preparation and submission of the documentation submitted on appeal. For example, there is no affidavit from counsel's assistant, copies of e-mail records, or international long distance telephone records to corroborate counsel's assertions regarding the alteration of [REDACTED]'s letter. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner's response also included an April 29, 2008 letter from [REDACTED] stating:

¹ The present attorney of record has represented the petitioner only on appeal.

² Counsel's name and signature appear in the "Person Filing Appeal" section of the Form I-290B. A "UPS 2ND DAY AIR" shipping envelope in which the appellate submission was sent bears the address of counsel's Roslyn Heights, New York law office.

In January of 2007 I was asked to prepare a second recommendation letter in support of an appeal on behalf of [the petitioner]. In cooperation with his law firm, SHENLAW, LLC, a letter of support was drafted. An early version of this letter contained a statement about my credentials that I did not wish to make. Accordingly, the statement was removed, and with absolute support for [the petitioner] I signed and submitted the letter dated January 8, 2007.

So it was with surprise and much dismay that I received the FAX . . . on April 8 of this year asking that I verify a statement that had been obviously inserted with a typewriter onto my original letter, a statement similar to that which I had previously removed. My response . . . was to label the document a forgery, a response which I now regret as much too hastily submitted and terminology that is much too coarse. I now understand from Professor [REDACTED] LLC how this unfortunate mistake occurred.

The April 29, 2008 letter from [REDACTED] confirms that his January 8, 2007 recommendation letter submitted by the petitioner was altered. Further, the explanation given by [REDACTED] contradicts counsel's explanation regarding the petitioner's submission of the falsified letter. [REDACTED] specifically states that he reviewed an early version of the letter, that the statement about his credentials was "removed" at his request, and only then did he sign the letter. In counsel's explanation, ". . . with the deadline for appeal approaching, my assistant must have forgotten to relate the suggested additional sentence to [REDACTED]" However, since [REDACTED] explained that he signed the letter only after the language in question had been removed, it is clear that the addition of the language occurred after [REDACTED] signed the letter. Clearly, CIS was not provided "the wrong version," but a version that was deliberately altered after [REDACTED] signed it. As discussed in the AAO's April 24, 2008 notice, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Accordingly, we find that the above-noted inconsistencies, including counsel's signature on the Form I-290B and the cover letter for the appeal, both dated January 13, 2007, constitute significant evidence of a lack of credibility in the petitioner's claim that submission of the falsified letter was simply an unintended mistake that occurred while counsel was allegedly "on a business trip in . . . China" in January 2007. The evidence of record does not support that conclusion.

The petitioner's response includes no independent and objective evidence to overcome the AAO's finding that he submitted a falsified letter of recommendation in support of the petition. In fact, the petitioner has not even provided a personal statement in response to the AAO's notice of derogatory information. The petitioner signed the Form I-140 under penalty of perjury and attested that he is solely responsible for the submission of evidence with this petition. Only in response to the AAO's April 24, 2008 notice has the petitioner acknowledged submission of a letter misrepresenting [REDACTED] credentials. Regarding the alteration of [REDACTED] letter and its materiality to this proceeding, the misrepresentation of his credentials specifically relates to evidence submitted by the petitioner for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, the regulation calls for "[d]ocumentation 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."

In addressing petitioner's membership in the American Phytopathological Society and the International Society for Molecular Plant-Microbe Interactions, the fraudulent alteration to [REDACTED] January 8, 2007 letter states: "I am regarded one of the nationally recognized experts in [REDACTED] fields of research, and therefore qualified to comment on the requirements of these societies and their members." The fraudulent addition was an attempt to establish [REDACTED] standing as a "recognized national or international expert in his discipline or field" within the meaning of 8 C.F.R. § 204.5(h)(3)(ii), and thus establish that he was qualified to comment on the membership requirements of the American Phytopathological Society and the International Society for Molecular Plant-Microbe Interactions. Accordingly, the addition of the altered language was clearly material to the adjudication of this petition.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and submitting the altered letter from [REDACTED], the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documentation in support of the petition, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. See *Matter of Ho*, 19 I&N Dec. at 591. The petitioner's arguments on appeal will be discussed below.

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.

Citizenship and Immigration Services (CIS) 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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means 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). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a botanist. The record reflects that the petitioner has worked as a research professor for the Chengdu Institute of Biology, Chinese Academy of Sciences, since 1985.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted the following:

1. First Prize National Science and Technology Achievement Award from the State Education Commission of the People's Republic of China (June 1993).
2. Second Prize National Excellent Science and Technology Book Award from the State News and Publishing Administration of the People's Republic of China (October 1990).
3. Third Prize Sichuan Science and Technology Achievement Award from the People's Government of Sichuan Province (March 1990).

4. Second Prize Science and Technology Achievement Award from the Chinese Academy of Sciences (October 1993).
5. 2002 Scientific Examination and Exploration Award from the Sichuan Scientific Exploration Association.
6. 2004 Scientific Examination and Exploration Award from the Sichuan Scientific Exploration Association.
7. Third prize award certificate from the Wuhan Science and Technology Association (April 1985).
8. Second Prize Science and Technology Achievement Award from the Sichuan Institute of Natural Resources (August 1995).
9. Second Prize Science and Technology Award from the Science and Technology Commission of the Revolutionary Committee of Sichuan Province (August 1979).
10. First Prize Science and Technology Achievement Award from the Sichuan Provincial People's Government (January 2006).

Items 3 and 5 through 10 above reflect provincial or local recognition rather than national or international recognition. Further, with regard to item 10, the petitioner received this award subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this award in this proceeding. Regarding items 1 through 10 above, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. While the petitioner submitted copies of the regulations governing some of his prizes, the English language translations accompanying these documents were not certified. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. In this case, the petitioner has not submitted evidence showing that his awards commanded national or international recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is supporting evidence showing that the recipients of the preceding honors were announced in major media or in some other manner consistent with national or international acclaim.

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

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

In order to demonstrate that membership in an association meets this criterion, the 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.

The petitioner submitted a September 20, 2006 letter from the American Phytopathological Society (APS) stating that he joined the society on August 22, 2005. The petitioner also submitted an October 2, 2006 letter welcoming him as a regular member of the International Society for Molecular Plant-Microbe Interactions (ISMPMI). The petitioner was admitted to membership in the ISMPMI subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's ISMPMI membership in this proceeding. While the record includes general information about the ISMPMI and the APS, there is no evidence (such as membership bylaws or official admission requirements) showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

On appeal, the petitioner submitted the January 8, 2007 letter from [REDACTED] stating:

The first supplemental remark I am going to make is that [the petitioner] is a member of associations in his fields of endeavor that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. He is a member of the American Phytopathological Society (APS) and the International Society for Molecular Plant-Microbe Interactions (ISMPMI). I am regarded one of the nationally recognized experts in [the petitioner's] fields of research, and therefore qualified to comment on the requirements of these societies and their members.

As discussed previously, the AAO sent the above letter to [REDACTED] for verification. [REDACTED] April 9, 2008 response to the AAO specifically stated that the January 8, 2007 letter was "a forgery." On April 24, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that the January 8, 2007 letter from [REDACTED] was fraudulent. In response, the petitioner submitted an April 29, 2008 letter from [REDACTED] confirming that his January 8, 2007 recommendation letter was altered. Thus, the petitioner failed to submit independent and objective evidence to overcome the AAO's finding that the letter was falsified. As stated previously, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. Because of the **fraudulent alteration, we cannot assign any weight to the statements in [REDACTED] letter.** Nevertheless, his January 8, 2007 letter does not specifically identify the APS or the ISMPMI's membership requirements and there is no documentary evidence to support [REDACTED] assertion that the societies "require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields."³ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is in any way questionable, the AAO is not required to accept or may give less weight to that

³ Nothing in the letters from [REDACTED] indicates that he holds membership or serves in an executive capacity in the APS or the ISMPMI, therefore, it is not apparent how he is qualified to provide information regarding their specific membership requirements.

evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As the content of [REDACTED] letter was falsified and therefore fraudulent, the AAO is not required to accept the information provided in his letter.

In light of the above, the petitioner has not established that he 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 petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. 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.⁴

The petitioner submitted video footage in the Swedish and Japanese languages allegedly showing scenes of the petitioner's fieldwork, him doing an interview, and him giving a speech. This documentary footage was unaccompanied by a certified English language translation as required by this regulatory criterion and the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that the documentary footage was broadcast by major media outlets, that the programs aired nationally, or that they were otherwise distributed to a wide audience in a manner consistent with sustained national or international acclaim. Further, the date that the video footage was broadcast was not provided as required by the plain language of this regulatory criterion.

On appeal, counsel states that an editorial authored by the petitioner in the January – April 1999 newsletter of the International Plant Genetic Resources Institute, a 1997 abstract authored by him entitled “Ethnobotany of Hongyuan nomads,” and two books published in 2006 for which he authored material also relate to this criterion. The preceding books were published subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the books published in 2006 in this proceeding. Nevertheless, the plain language of this regulatory criterion requires the published material to be “about the alien” rather than written by the alien. The preceding materials authored by the petitioner are relevant to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be addressed there.

In light of the above, the petitioner has not established that he 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.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which 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, evaluating the work of accomplished professors on a national panel of experts is of far greater probative value than evaluating the work of students or one’s coworkers.

The petitioner submitted a September 12, 2006 letter from the Human Resource and Education Department, Chengdu Institute of Biology, Chinese Academy of Sciences, stating: “[The petitioner] was a committee member of academic committee in Chengdu Institute of Biology, Chinese Academy of Sciences (CIB, CIS) and is committee member of Academic advisory commission of CIB, CAS.” The English language translation of this letter was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the letter does not include a name, address, telephone number, or any other contact information. The petitioner has not established that his activity for these committees was tantamount to his participation as a judge of the work of others in his field. For example, the record lacks information regarding the nature of his duties as a committee member, the specific dates he served, the names of the individuals whose work he evaluated, and their level of expertise.

The petitioner submitted a photocopy of a letter appointing him as a member of the editorial board of the journal *Natural Products Research and Development* effective September 25, 2005. In response to the AAO’s notice, the petitioner submitted the original September 25, 2005 appointment letter, a certified English language translation of the letter, contact information for its author, and general information about the journal. The record, however, does not include evidence showing the petitioner’s participation as a judge of the work of others for this journal during the five-day period preceding the petition’s September 30, 2005 filing date.⁵ For example, the record lacks evidence showing the articles he evaluated for the journal and the dates of his performance of editorial services. We acknowledge the petitioner’s September 25, 2005 *appointment* to the editorial board of *Natural Products Research and Development*, but there is no evidence demonstrating that he actually participated as a judge of the work of others in his capacity as an editorial board member prior to the petition’s filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submitted documents entitled “Sichuan Branch of the Chinese medicine industry’s the association confirmation letter” (dated “2006/09/12”) and “Sichuan Branch of the Chinese medicine industry in the development of the pharmaceutical industry association Program (2) (draft) (2006-3-30).” These

⁵ According to the contact information submitted by the petitioner, the office for this Chinese professional journal is located in Chengdu, China. The record reflects that the petitioner entered the United States on June 4, 2005 and was residing in Edison, New Jersey at the time of his appointment to the journal’s editorial board.

documents list the petitioner's name among those of the "expert direction committee members." The English language translations of these documents were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the confirmation letter does not include an address, telephone number, or any other contact information. Nevertheless, the dates of the preceding documents indicate that the petitioner's involvement commenced subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Even if the petitioner were to establish his participation as of September 30, 2005, he has not established that his activity for this committee was tantamount to his participation as a judge of the work of others in his field. For example, the record lacks information regarding the nature of his duties as a committee member, the specific dates he served, the names of the individuals whose work he evaluated, and their level of expertise.

The petitioner submitted an August 18, 2005 letter of appointment from the [REDACTED] Scientific and Technology Consulting Services Company, Ltd., naming him director of the company's academic committee for a period of five years. This letter was unaccompanied by a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the letter does not include a name, address, telephone number, or any other contact information. The petitioner has not established that his activity as director was tantamount to his participation as a judge of the work of others in his field. For example, the record lacks information regarding the nature of his duties as director, the names of the individuals whose work he evaluated, and their level of expertise.

With regard to the preceding committee memberships, there is no evidence that the petitioner judged the work of others in his field in a manner significantly outside the general duties of these positions and consistent with sustained national or international acclaim at the very top of his field. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine to a particular assignment, or in a substantial proportion of positions within one's occupation.⁶ The petitioner's performance of general supervisory duties as required by his appointments is not tantamount to judging the work of others in the field and cannot suffice to meet this regulatory criterion.

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

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

The petitioner submitted evidence of his research and agricultural projects pertaining to wetlands, buckwheat, Shuangxiling Lotion, and plant species identification, but there is no evidence establishing that this work constitutes scientific contributions of major significance in the field. The petitioner also submitted evidence of his authorship of published material resulting from the preceding research and agricultural projects. Material written and published by the petitioner relates to the "authorship of scholarly articles" criterion at

⁶ This is true with all duties inherent to an occupation. For example, publication is inherent to scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national or international acclaim, for example, by being widely cited.

8 C.F.R. § 204.5(h)(3)(vi). 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, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the published work authored by the petitioner under the next criterion.

The record includes several letters discussing the petitioner's scientific contributions. We cite representative examples here.

Former International Plant Genetic Resources Institute (IPGRI) Coordinator for East Asia Office, states:

In 1996, I started a series research project on buckwheat. Bitter buckwheat (*F.tataricum*) and sweet buckwheat (*Fagopyrum esculentum*) are one of the most important crops for local communities in China, Nepal, India and also in Japan. The activities on buckwheat in the Asian Pacific Ocean (APO) region are mainly in China, Japan, India, Nepal and Republic of Korea through networking collaboration.

It was through working on these projects that I met [the petitioner], who was highly recommended by the Chinese Academic of Sciences as a lead scientist for that project. . . . [The petitioner] applied his unique research capabilities and rich cross field knowledge to extend the research area from buckwheat in-situ conservation to its relative wild species bio-economy, bio-system, chemistry researches, and achieved outstanding results at the end. Since 1996, [redacted] started field investigation and research in the regions where bitter buckwheat was found including Sichuan, Yunnan and Guizhou Provinces. He skillfully collected large amount of specimens, including materials for experiments and the related information. His research work included important subjects such as the taxonomy, distribution, habitat, plant community, micro-morphological characters, biodiversity, nutritional elements, medicine effect, ethno botany investigation and farm conservation of bitter buckwheat. Based on years of hard work and meticulous research, [redacted] had made many important contributions like:

1. Resolved some long-time confusion in the scientific community by clarifying wild species problem, cultivating a few new species and discovering the relationship between different species. In the past, there are 10 species and 1 variety of *Fagopyrum* in China; two species of them are cultivated (Li An-ren, 1989). Now it was determined that there are 10 species of *Fagopyrum* in China, including three cultivated and 7 related wild species, bitter buckwheat besides *Fagopyrum tataricum* (L.) Gaertn, and has another species--*Fagopyrum odonopterum* [redacted]
2. First discovered Jinsha river region of China is center of distribution and origin place of bitter buckwheat and related wild species. This was looking for a key place of distribution and origin place of bitter buckwheat and related wild species, that has important value to study distribution and origin place of bitter buckwheat and related wild species. This has value help to research species origin of bitter buckwheat which feel puzzled long time in science.

3. First discovered the *species--Fagopyrum lineare* [REDACTED] is wild ancestry species of bitter buckwheat, and discovered relationship between bitter buckwheat and related wild species. His work has helped improve the breeding of better buckwheat and more economized use of it in the world.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any public or private research, in order to be accepted for publication or funding, must offer new and useful information to the existing pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field. 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 Professor [REDACTED] discusses the value of the petitioner's work, there is no evidence that it constitutes original contributions of major significance in the petitioner's field consistent with sustained national or international acclaim. For example, there is no evidence showing that the published research resulting from the petitioner's buckwheat studies was frequently cited by independent researchers.

[REDACTED] North American Manager of [REDACTED] Perennial Seeds, states:

I first met [the petitioner] in Chengdu, China in September 2001, and joined in a United State[s] botanic research group in 2001, to do series of study projects in Sichuan, China. As a well respected botanist, he was enlisted to help lead our scientific expedition in the search for native Chinese plant species in western Sichuan. I returned again in 2003 and have developed the utmost respect for his intelligence, professionalism, honesty and kindness.

He has cooperated with many international professors for joint-study projects, and is one of the top biologists on wild plant resources research. He is very familiar with the distribution of wild plant resources, and possesses a vast understanding of native and garden plant classification. He is researched, especially, on the three main wild floral plants growing from the mountainous areas in West-south China--Gentiana, Primula and Rhododendron.

Professor [REDACTED] Institute of Biology, Chinese Academy of Sciences, states:

From August 1985 to present, [the petitioner] has been doing research work in Chengdu Institute of Biology, Chinese Academy of Sciences.

[The petitioner] researches resource botany long time, and possesses a good knowledge of resource botany, my colleagues speak highly of his research habits, his creativity, and the organized manner in which he approaches every problem. [The petitioner] was in charge of many projects founded [sic] by various sources, such as the Central Government, Chinese Academy of Sciences, National Foundation for Nature Sciences and international organization

Professor [REDACTED] Institute of Chinese Medicine, Sichuan Academy of Traditional Chinese Medicine and Pharmacy, Chengdu, China, states:

From August 1985 to present, [the petitioner] has been doing research work in Chengdu Institute of Biology, Chinese Academy of Sciences. Researched medicinal plant of nation civilian and wetland plant in South west China by long times. Familiar with species, utilizations and resources of Chinese civilian medicinal herb, Tibetan civilian medicinal herb, Yi Nationality civilian medicinal herb. Familiar with species, ecology and conservation of wetland plant.

* * *

[The petitioner] set up a nongovernmental institute "West China Institute of Biological Resources" in 1993, director and in charge of new medicine project about woman vagina disinfectant and finished this project on this Institute in 1997. This disinfectant was passed examination of Food Drug Agency of Control and Management in China. The medicinal factory produced this disinfectant and sale it in market.

The record, however, does not include supporting evidence showing that the vaginal disinfectant developed by the petitioner constitutes an original scientific contribution of major significance in his field.

The preceding letters of support indicate that the petitioner is a capable scientist who has earned the respect of others with whom he has interacted. The record, however, lacks corroborating evidence (such as an extensive citation history) showing that the research findings specifically attributable to the petitioner have been unusually influential, highly acclaimed throughout his field, or have otherwise risen to the level of original scientific contributions of major significance. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS 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, CIS 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; CIS 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 experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher or botanist who has earned sustained national or international acclaim. Without extensive documentation showing that the petitioner has made original contributions of major significance in the field, we cannot conclude that he 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.

We withdraw the director's finding that the petitioner meets this criterion.

The petitioner submitted evidence of his authorship of articles in publications such as *Acta Hydrobiologica Sinica*, *Wuhan Botanical Research*, and *Acta Phytotaxonomica Sinica*. The petitioner also submitted evidence of several books he authored or for which he contributed material. On appeal, the petitioner submitted a book chapter he authored in *Plant Genome: Biodiversity and Evolution* (2006) and a book he coauthored entitled *Resources and Tartary Buckwheat (*Fagopyrum tataricum*) and Related Wild Species in China* (2006). These two books were published subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the books published in 2006 in this proceeding. Nevertheless, the record does not include evidence (such as circulation statistics) showing that any of the petitioner's publications had significant national or international distribution. Further, we note that authoring scholarly material is inherent to the research field. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's published work when determining its significance to the field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. In this case, the petitioner has not submitted evidence establishing that his articles and books were frequently cited, and that they appeared in major publications or were otherwise published and circulated in a manner consistent with sustained national or international acclaim. As such, the petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The record reflects that the petitioner has worked as a research professor for the Chengdu Institute of Biology, Chinese Academy of Sciences, since 1985. As evidence of the Chengdu Institute of Biology's distinguished reputation, the petitioner's appellate submission included information printed from the institute's internet site in 2006. The self-serving nature of this documentation is not adequate to demonstrate that the institute had a distinguished reputation during the petitioner's tenure. On appeal, the petitioner also submitted a December 26, 2006 letter from the institute discussing his work and career achievements. This letter does not include a name, address, telephone number, or any other contact information. Further, the evidence submitted by the petitioner does not show that the petitioner's role as a professor was leading or critical for the institute as a whole. For example, there is no evidence demonstrating how the petitioner's role differentiated him from other professors at the Chengdu Institute of Biology, let alone its more senior administration (such as its "Academician of the Chinese Academy of Sciences" and "Senior Officers"). The documentation submitted by the petitioner does not establish that he was responsible for the Chengdu Institute of Biology's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

In light of the above, the petitioner has not established that he 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 did not initially claim to meet this regulatory criterion. On August 1, 2006, the director issued a notice requesting evidence for this criterion and the other regulatory criteria. The petitioner's response to the director's request for evidence did not address the salary criterion. On appeal, the petitioner submitted a September 4, 2006 letter from the Human Resource and Education Department of the Chengdu Institute of Biology, Chinese Academy of Sciences, stating that his income is 2,370 Yuan per month. The petitioner also submitted a September 8, 2006 letter from the [REDACTED] Science and Technical Consultant Limited Liability Company stating that he earns 4,500 Yuan per month. With regard to the salary letters submitted on appeal, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested salary evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Nevertheless, the English language translations accompanying the salary letters were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nor do these letters include a name, address, telephone number, or any other contact information. Further, as the letters provide information regarding the petitioner's salary as of September 2006, they cannot be considered in this proceeding. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Finally, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." As a basis for comparison, the petitioner submitted a 2001 salary table for scientific researchers. Salary data from 2001, however, is not an appropriate basis for comparison with the petitioner's 2006 income.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 with a finding of fraud and willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted fraudulent documentation in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.