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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 04 2011

IN RE: Petitioner: [redacted]
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:

[redacted]

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 $630. 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, Texas Service Center, on November 3, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the 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 "sustained national or international acclaim" and present "extensive documentation" of his or her 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 evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner claims that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). In addition, the petitioner argues:

> [T]here is another erroneous fact associated with the decision that I would like to bring to your attention. Denial letter on the applicant's I-485 (dated November 2, 2009) states that the I-140 petition was denied on October 21, 2009, meaning well before receiving the petitioner's response to the RFE issued or without actually waiting for the petitioner's response even though there was still more than a week left for the deadline to elapse. Although the adjudicator has mentioned receiving the petitioner's response to the RFE, the decision on I-140 (as well as I-485) appears to have been made beforehand without actually waiting to evaluate the RFE response. Even though the denial letter on I-140 is dated November 3, the decision on I-140 was originally made on October 21, 2009 as was evident from the I-485 denial letter. Therefore, this petitioner believes that evidence submitted as part of the RFE response was not actually given due consideration while evaluating the I-140 petition and therefore, arrived at the erroneous conclusion.

A review of the record of proceeding reflects that the director denied Form I-140 on November 3, 2009. According to the denial of the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, the director indicated that the petitioner's Form I-140 was denied on October 21, 2009. A review of the director's decision of Form I-140 fails to reflect that the director pre-adjudicated the petition prior to receipt of the petitioner's response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). In fact, the director mentioned in his decision that the response to additional evidence was received on October 28, 2009, and discussed some of the petitioner's evidence submitted in response to

the request for evidence. It appears that the director simply provided the incorrect denial date of the petition in the petitioner's Form I-485 denial letter.

Even if the AAO determined the director had committed such an error, it is not clear what remedy would be appropriate beyond the appeal process itself. It would serve no useful purpose to remand the case when the director discussed the petitioner's documentary evidence that was submitted both at the time of the original filing of the petition and in response to the director's request for additional evidence. Further, on appeal, the AAO will evaluate all of the petitioner's evidence as it relates to the petitioner's eligibility for the claimed criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). 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 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).

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 the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the 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. *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.

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 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).

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 April 30, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a scientist in nutritional and food sciences. The petitioner has submitted evidence pertaining to the following criteria under the regulation 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 director found that the petitioner failed to establish eligibility for this criterion. At the time of the original filing of the petition, counsel submitted the following documentary evidence:

1. A letter, dated January 6, 1994, to the petitioner from [redacted] at the [redacted] who stated that the petitioner was awarded a scholarship "to follow a [redacted] degree progamme at our Institute";

2. A letter, dated December 21, 2000, to the petitioner from [redacted] reflecting that the petitioner was awarded a scholarship of $275/month for his Ph.D. study at [redacted]

3. A letter, dated April 4, 2001, to the petitioner from [redacted] reflecting that the petitioner was "nominated as the recipient of a [redacted] in the amount of $750 for the 2001-2002 academic year," and noting that the petitioner was required to fulfill additional obligations in order to receive the scholarship;

4. A Certificate of Award to the petitioner from the 2002 [redacted] on January 23, 2002; and

5. A photograph of a plaque from the [redacted] in 2007.

We note that in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel submitted a self-compiled list claiming the petitioner's receipt of the following additional awards:

a. Postgraduate Research Fellow from the [redacted]

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

b. [redacted] in 2001; and

c. [redacted] Undergraduate Student Scholarship.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

Regarding items 1 – 3 and a – c, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, postdoctoral fellowships, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Moreover, financial aid awards in the form of scholarships are reserved for students in need of financial assistance to pay for tuition and not based on excellence in the field. Therefore, the petitioner failed to establish that his scholarships are nationally or internationally recognized prizes or awards for excellence in the field. Moreover, the petitioner failed to submit any documentary evidence beyond the awarding entities to demonstrate that the scholarships are recognized nationally or internationally for excellence in the field of endeavor. Finally, while they may be prestigious, fellowships, scholarships, and other sources of competitive financial support are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. We cannot conclude that receiving funding for one's research and academic training constitutes receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to students seeking to further their research, training, and experience. Academic awards and honors received while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field. We note that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner to submit evidence of his receipt of prizes or awards. However, counsel failed to submit any documentary evidence demonstrating the petitioner's receipt of items a – c, as claimed in his self-compiled list. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

Regarding item 4, while the petitioner demonstrated that he won the Best Student Poster at the 2002 [redacted] the petitioner failed to submit any documentary evidence establishing that the award is nationally or internationally recognized for excellence in

the field. Merely submitting evidence of the petitioner's receipt of a prize or award is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) without documentary evidence reflecting that the prize or award is nationally or internationally recognized for excellence in the field of endeavor.

Regarding item 5, the petitioner submitted screenshots from [redacted] website reflecting diplomate status is obtained by becoming a member of [redacted]. In order to become a member, an applicant must complete an application, submit his or her transcripts, pay membership dues, and successfully pass an examination. We are not persuaded that becoming a diplomate equates to a nationally or internationally recognized prize or award for excellence in the field; rather diplomate status reflects membership status with [redacted].[3] Furthermore, the petitioner failed to submit any documentary evidence beyond [redacted] website to establish that being an [redacted] Diplomate is a nationally or internationally recognized prize or award for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's prizes or awards be *nationally or internationally recognized* for excellence in his field. In this case, the petitioner failed to demonstrate that his prizes or awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Accordingly, the petitioner failed to establish eligibility for 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.*

A review of the record of proceeding fails to reflect that the petitioner claimed eligibility for this criterion at the time of the original filing of the petition or in response to the director's request for additional evidence. However, on appeal, the petitioner is now claiming eligibility for this criterion. As such, the director could not have erred in his decision as the petitioner is only claiming eligibility for this criterion for the first time on appeal.

On appeal, the petitioner submitted an article and stated that it "was published after filing the original Form I-290B." We note that according to the translation, the article was published on December 20th but failed to specify the year. However, since the petitioner claimed that the article was published after he filed Form I-290B on December 3, 2009, it is reasonable to assume that the article was published on December 20, 2009.

The petition was filed on April 30, 2009. The article was published after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider this article as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of*

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[3] As the petitioner did not claim eligibility for the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii) at any time in this proceeding, we will not further address the petitioner's membership in [redacted]

Katigbak, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Notwithstanding the above, the translator stated that "[t]his is an approximate translation, but not exact and verbatim." The plain language of the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires a "full English language translation which the translator has certified as complete and accurate." However, the translator's "approximate" translation fails to meet the plain language of the regulation. Because the petitioner failed to comply with 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. We also note that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the petitioner to include the author of the material. However, the translation only indicates that the author is a [redacted] correspondent and not the name of the author of the article. Finally, the petitioner failed to submit any documentary evidence establishing that [redacted] is a professional or major trade publication or other major media.

Accordingly, the petitioner failed to establish 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.*

The director determined that the petitioner's documentary evidence reflecting his peer reviews for journals and grant applications failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." Pursuant to *Kazarian*, 596 F.3d at 1121-22, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

Although the petitioner claimed eligibility for this criterion at the time of the original filing of the petition and in response to the director's request for additional evidence, the director did not address this criterion in his decision. Nonetheless, will review the record of proceeding to determine if the petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scientific-related contributions "of major significance in the field."

A review of the record of proceeding reflects that at the time of the original filing of the petition, counsel submitted a self-compiled list of the citations of the petitioner's work by others and indicated at the top of the document that it is "details of the partial list of scholarly works published in international peer reviewed journals citing petitioner's published work." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. We note here that counsel did submit a screenshot from [redacted] that reflected that the petitioner's articles were cited 132 times. However, the screenshot only lists the name of the publication and does not list the names of the petitioner's articles that were cited by others. As such, we are unable to determine if any of these citations are self-citations by the petitioner or his co-authors. Moreover, the petitioner also submitted a self-compiled list and indicated at the top of the document that it "is a list of some of my articles in peer reviewed international journals that can be found by Using Google Scholar program." However, the petitioner failed to submit any documentary evidence supporting his assertions, such as screenshot from *Google Scholar* showing the citation of his work by others. 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)). In response to the director's request for evidence, counsel submitted another self-compiled list and claimed that "[t]hese details were provided either by Google Scholar or [redacted] Again, counsel failed to submit any documentary supporting his assertions.

The petitioner also submitted recommendation letters that were written on behalf of the petitioner discussing specific articles that were written by the petitioner. For instance:

[redacted] who did not indicate that name of the article, stated that the petitioner wrote an article about [redacted] that has been cited frequently." However, [redacted] failed to indicate how many times the article has been cited.

[redacted] stated that the petitioner's article entitled, [redacted] had ">10 citations."

[redacted] stated that the petitioner's article entitled, [redacted] was cited one time. We note that [redacted] indicated that the petitioner wrote another article entitled, [redacted]" but failed to indicate if this article was ever cited.

[redacted] stated that the petitioner "was invited to contribute towards a new book series to be published by us – [redacted] However, the record fails to reflect if the petitioner ever contributed towards the book, let alone if the petitioner's work was ever cited from the book.

Although [redacted] stated that the petitioner "was an invited author on a review article published in [redacted] in 2008," [redacted] failed to identify the name of the article. In addition, [redacted] failed to identify that the petitioner's article was cited by others.

While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field.* In this case, according to the screenshot from [redacted] 24 of the petitioner's articles have been cited 132 times with the highest article cited 27 times, and the majority of the petitioner's articles cited less than ten times, including 13 articles that were cited one time. We are not persuaded that such citations are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

Furthermore, a review of the record of proceeding reflects that the petitioner submitted additional recommendation letters. In this case, while the recommendation letters praise the petitioner for his work in nutritional and food sciences, they fail to indicate that his contributions are of *major*

significance in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance:

[redacted] listed several examples of the petitioner's original findings from his research and work, such as [redacted] However, [redacted] failed to indicate that the petitioner's work has been of "major significance in the field." While [redacted] stated that she is interested in the petitioner's work because it is similar to her own, she failed explain the significance of the petitioner's work outside her own research. [redacted] also discussed the petitioner's research in [redacted] However, in discussing the impact of this research, she stated that "[w]hat and how much consumption of these important dietary components *could* affect how healthy we live and what state of health we *may* leave behind for the generations which follow are vital issues to our national interests [emphasis added]." Clearly, the significance of the petitioner's work has yet to be determined on the field.

[redacted] brief claimed that the petitioner's "work and international reviews on milk fatty acid composition . . . is of international reputation, and shows that he has contributed considerably to the field." Again, the letter from [redacted] fails to reflect that the petitioner has made contributions of "major significance in the field." The regulation at 8 C.F.R. § 204.5(h)(3)(v) not only requires the alien to make original contributions but also requires those contributions to be of major significance. The lack of specific information does not offer any evidence that the petitioner's contributions have been of major significance.

[redacted] briefly stated that the petitioner's work on the regulation of calcium and phosphate homeostasis "provide[s] fundamental knowledge for scientists in various fields" and "are much appreciated." [redacted] failed to provide any additional information reflecting the influence or impact of the petitioner's work in the field as a whole. We are not persuaded that providing fundamental knowledge is sufficient to demonstrate that the petitioner's contributions have been of major significance in the field. Again, the lack of detailed information explaining the significance of the petitioner's work in the field fails to establish eligibility for this criterion.

[redacted] indicated that the petitioner "has demonstrated how we can increase [redacted] content of milk and other dairy products, and how that *could* be utilized in minimizing the risk of some of these chronic diseases using dietary means [emphasis added]." Although [redacted] indicated that the petitioner's research *could* be utilized in minimizing the risk of chronic diseases, he failed to indicate that the petitioner's research has ever been utilized in the field, or chronic diseases have been reduced, so as to establish that the petitioner's work has been of major significance in the field. Without evidence indicating the petitioner's work is already being applied in the field, the petitioner cannot establish eligibility for this criterion based on possible or speculative outcomes.

Similarly, while [redacted] described some of the research that the petitioner worked on at [redacted] and indicated original contributions, [redacted] failed to discuss the significance of the petitioner's work on the field. Rather, [redacted] indicated that "these steroid regulate phosphate and calcium transport through unconventional receptors has great *implications* for new therapeutic strategies in treating diseases such as osteoporosis [emphasis added]." [redacted] failed to identify any strategy that has been developed as a result of the petitioner's research. It is insufficient to meet the plain language of this regulation based on possible implications, without evidence reflecting that the petitioner's work is actually being applied in the field.

[redacted] briefly described the petitioner's research in "extrusion processing" and "procyanidin monomers and dimers" and indicated that "[p]reliminary results obtained from a few trials have been extremely *encouraging* and further positive results from this study *could* lead the way to the development of novel functional foods and neutraceuticals derived from waste products." [redacted] failed to indicate that the petitioner's research and work have significantly influenced his field. Instead, [redacted] stated that the petitioner's work could develop functional foods. There is no indication that functional foods have been developed as a result of the petitioner's work, so as to establish that he has made contributions of major significance. It will not suffice to meet this regulatory requirement based on possible or future implications without evidence that his work has already been applied in the field.

[redacted] discussed the petitioner's research regarding "extrusion processing." However, when addressing the significance of the petitioner's work, [redacted] merely indicated that his work was published in two articles. As indicated above, the fact that the petitioner's work has been published is insufficient to meet this regulation without evidence demonstrating that his work is of "major significance in the field." Moreover, [redacted] discussed the petitioner's research in the "improvement of assay techniques." In this case, [redacted] indicated that a manuscript has been submitted for publication and "[t]hese findings *will eventually* lead to better and more accurate estimates of concentrations of procyanidins in foods that *will* allow for calculation of intake by humans." Clearly, [redacted] speculated on the impact of the petitioner's work on the field without demonstrating that it work has already influenced the field in a significant manner. Finally, [redacted] discussed the petitioner's current research in "the effects of phytochemicals" and indicated that manuscripts are currently being prepared for submission. Again, as the manuscripts have not even been submitted, there is no evidence reflecting that the petitioner's contributions in this area are original and of major significance.

[redacted] summarized the petitioner's research by stating:

> [The petitioner] published seven papers related to modifying the fatty acid content of milk through selection of feedstuffs for dairy cows, especially with the aim of increasing the level of conjugated linoleic acid. He then published six papers from the year and a half he worked in [redacted] research group studying the membrane signaling of Vitamin D and its influence on phosphate and calcium uptake. This is an area of importance to the US population in counteracting the

As indicated above, the recommendation letters reflect that the petitioner has made original contributions based on his research. However, the letters fail to indicate that his contributions are of *major significance* in the field. Moreover, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings he has made are not currently being implemented in his field. Again, while we acknowledge the originality of the petitioner's findings, the letters do not indicate that anyone is currently applying the petitioner's research findings, so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while we do not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's research and work as both novel and of great potential interest, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

While those familiar with his work generally describe it as "important," "valuable," and "significant," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[4] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion 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

[4] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' 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.

Finally, the petitioner claimed eligibility based on a letter, dated May 2009, from [redacted] who indicated that the petitioner's biography was selected "for inclusion in the forthcoming 2010 Edition of [redacted] In addition, the petitioner submitted an email, dated October 22, 2009, from [redacted] who stated that the "new 2010 edition of [redacted] in America has just been published." The petitioner's selection and inclusion occurred after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Although the letter indicates that the petitioner was selected because of his "outstanding achievements," the letter fails to indicate what were the "outstanding achievements" of the petitioner and if those "outstanding achievements" are of major significance in the field.

We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner's work has been unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner failed to establish 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.*

In the director's decision, although he found that the petitioner published articles in scientific journals, he found that the petitioner failed to establish eligibility for this criterion as the petitioner's work did not garner any "national or international attention, for example by being widely cited by independent researchers." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

At the time of the original filing of the petition, counsel based his claim of the petitioner's eligibility for this criterion on counsel's exhibit list. Specifically, counsel referenced recommendation letters from [redacted] as well as an email from [redacted] and a certificate acknowledging the petitioner's attendance at the [redacted] In response to the director's request for additional evidence, counsel failed to address the petitioner's eligibility for this criterion. In fact, counsel only addressed the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

In the director's decision, he simply listed several recommendation letters and found that the recommendation letters "failed to sufficiently show that [the petitioner has] risen to the top of [his] field of endeavor." On appeal, the petitioner argues that at the time of the original filing of the petition, he only claimed eligibility for the four criteria addressed in counsel's response to the director's request for additional evidence. Moreover, on appeal, the petitioner neither claimed eligibility for this criterion, nor did he did contest the decision of the director or offer additional arguments. As the petitioner is not making a claim of eligibility for this criterion, we will not further discuss this criterion on appeal and consider this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005).

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) 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." *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). *See also Kazarian*, 596 F.3d at 1115. The petitioner established that he met the plain language of the regulation for two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the 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).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has received scholarships and fellowships, has served as a grant proposal reviewer and manuscript reviewer, has published some scholarly articles, and has had some of his work cited by others. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), 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).

While we found that the petitioner failed to establish the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), we note that the petitioner based his eligibility on a student poster competition and scholarships. Awards won by the petitioner in competitions that were limited by his student status do not indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in student status or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[5] Likewise, it does not follow that a scientist like the petitioner who has had success in a competition restricted by student or non-professional status, should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Moreover, regarding the petitioner's scholarships and fellowship, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and fellowships cannot be considered prizes or awards in the petitioner's field of

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[5] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

endeavor. Moreover, competition for scholarships and fellowships is limited to other students. Experienced experts do not compete for scholarships or fellowships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

While we determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. The petitioner demonstrated his eligibility based on his service as a grant proposal reviewer for the [redacted] as a reviewer for the [redacted], and as an editor for the [redacted] While the petitioner submitted additional documentary evidence, the documentation either reflected that the petitioner was requested to serve as a reviewer without any evidence that he actually reviewed, or there was insufficient information to establish that he judged the work of others. For example, the petitioner submitted an email from [redacted] thanking the petitioner in his "interest in serving as a member of the editorial board of the [redacted] However, the petitioner failed to establish that he actually reviewed any manuscripts. Furthermore, the petitioner submitted a letter from [redacted] who stated that the petitioner "has been serving as a reviewer for the [redacted], since, 2005." However, [redacted] failed to indicate exactly what the petitioner reviewed and how many were reviewed. Similarly, the petitioner submitted a letter from [redacted] who stated that the petitioner "has been serving as a reviewer for the [redacted] since 2007." Again, [redacted] failed to indicate what the petitioner reviewed and how many were reviewed. Moreover, the petitioner submitted a screenshot from [redacted] reflecting that the petitioner is listed as an editorial board member for the [redacted] However, the document fails to indicate if the petitioner judged the work of others in his capacity as an editorial board member. In addition, the petitioner submitted an email from [redacted] requesting the petitioner to join as a guest editor for the [redacted] The petitioner failed to establish that he ever performed as a guest editor for [redacted] Further, the petitioner submitted a certificate reflecting that the petitioner is an editorial board member and reviewer for the [redacted] However, the certificate fails to reflect what the petitioner reviewed or edited and how many were reviewed or edited. Finally, counsel submitted several self-compiled lists claiming that they reflected manuscripts that were reviewed by the petitioner. Counsel failed to provide any documentary evidence from the publications supporting his assertions. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Nonetheless, we note that peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at literary conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of professors or scholars who publish themselves in journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, or chaired a technical committee for a reputable conference, we cannot conclude that the petitioner is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

We also determined that the petitioner met the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). A review of the documentary evidence reflects that the petitioner submitted 24 scholarly articles that were published at the time of the filing of the petition. However, when compared to the authorship of the petitioner's references, it appears that his references are far above the accomplishments of the petitioner. For example:

1. [redacted] – "[P]ublished more than 100 original research and review articles";
2. [redacted] – "Co-authored over 70 publications including books, book chapters and scientific articles";
3. [redacted] – "[P]ublished over 220 papers in peer reviewed journals"; and
4. [redacted] – "[P]ublished over 100 scientific papers."

Although the petitioner met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the moderate publication of such 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 scholars, we will also evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to

Kazarian, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that his work has been cited 132 times with the highest article cited 27 times, and the majority of the petitioner's articles cited less than ten times, including 13 articles that were cited one time. While these citations demonstrate some interest in his published 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.

While we found that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based his claim of eligibility almost entirely on recommendation letters. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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 individuals, especially when they are colleagues of the petitioner without any prior knowledge of the petitioner's work, supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act 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). The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated his "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

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 petitioner 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 petitioner 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 petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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.