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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]

DATE: APR 14 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]
SRC 07 279 56825

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[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. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

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

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

On motion, counsel argues that the petitioner's motion was filed "in an attempt to clarify certain issues and request reconsideration of the decision made." Counsel repeats previous arguments that the petitioner meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iv), and (vi). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached in its decision that may not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

For the reasons discussed below, we affirm our prior decision.

I. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *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.* at 1121-22.

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

[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).

> of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian.* As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an obstetrician, gynecologist, and gynecologic oncologist. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).[2]

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> Initially, counsel asserted that the petitioner was submitting "Awards and Appreciation Certificates" including a 1997 presidential "award" for the petitioner's first published book; a 1988 [redacted] commendation letter from [redacted] an "acknowledgement letter" from [redacted] *Journal* and an "acknowledgement letter" from [redacted] of [redacted]

[2] On motion, the petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

The petitioner submitted a 1997 letter signed by [redacted] addressed "Dear Author." The letter congratulates the unidentified author on the publication of his or her first book, which is also not identified. In addition, the petitioner submitted certificates of appreciation of the petitioner's services, "judging in connection with scientific articles" and efforts as a research consultant. The director requested evidence of recent awards and evidence of the criteria for any awards received. In response, counsel reiterated that the petitioner had received a 1997 "presidential award" from the [redacted] Counsel asserted that the "criteria for receiving such high level and national awards are very demanding and one must [be] extremely deserv[ing] in a nation of 75 million to be selected for such an honor." Counsel further asserts that the selection process involves a review of selected published books by the Ministry of Higher Education, university professors and presidents, leading researchers as well as approval by the Iranian Medical Association, the President's Office on Medicine and "contributions made by physicians."

The director concluded that the petitioner had not substantiated the assertions about the selection process for the award and that an award from 1997 was not evidence of sustained acclaim in 2007 when the petition was filed. On appeal, counsel asserts that while there are no written criteria for the selection process, "such awards and their selection process[es] are universal." Counsel further asserts that the time elapsed since the issuance of the award should not diminish its significance.

Counsel is not persuasive. First, section 203(b)(1)(A) requires evidence of "sustained" acclaim. Thus, evidence that predates the petition by 10 years, without evidence of more recent acclaim, is insufficient. Second, as the letter is addressed to "Dear Author" and does not identify the petitioner's book, it is not even clear that the petitioner is the recipient of this "award." Finally, 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). We are not persuaded that a "Dear Author" letter is a "universal" award for which we must presume a competitive selection process. The use of "Dear Author" on the letter and the failure to identify the author's book strongly suggest that the Iranian president commonly issues congratulatory letters to first-time authors. The record lacks evidence regarding the number of such letters issued, media coverage of the selection for such letters, or similar evidence indicating that receiving such a letter is a recognized award or prize. Counsel's assertion that written material about the award does not exist does not create a presumption of eligibility under this criterion. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), it is the petitioner's burden to demonstrate not only the receipt of award or prizes but also that the awards or prizes are nationally or internationally recognized. We will not presume that the issuance of a congratulatory letter addressed to "Dear Author" is a nationally or internationally recognized prize or award simply because it was signed by the President of Iran, a country with a population of 75 million people. The non-existence or unavailability of initial evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2).

> Finally, letters of appreciation cannot be credibly asserted to constitute nationally or internationally recognized prizes or awards. Insofar as the letters thank the petitioner for performing duties relating to the remaining criteria, they will be addressed below.
>
> In light of the above, the record does not contain nationally or internationally recognized prizes or awards issued to the petitioner.

On motion, counsel states:

> Presidential Award for the petitioner's first published book shows that this book was selected among all of the books that were published in 1997. That award considered highest in the nation at that time was special and not given to all the authors. In 1997, the petitioner was the only gynecologist of her era who was granted that award. The fact that the petitioner's name does not appear in the award should not be a factor in reducing her contributions and achievements in the field. In fact within the Iranian culture which emphasizes on humanitarian service to mankind, the individual's name is not considered as significant and thus the awards, such as this Presidential Award, was given to the "Dear Author" who was the petitioner.

In this instance, there is no documentary evidence to support counsel's claim that the petitioner's book was singled out or that a generic "Dear Author" letter which does not bear the petitioner's name or her book title "constitutes an award considered highest in the nation." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). As discussed in the AAO's appellate decision, the use of "Dear Author" on the letter and the failure to identify the author's book strongly suggest that the Iranian president commonly issues congratulatory letters to first-time authors. The petitioner fails to submit any evidence on motion to refute the AAO's finding. Further, the petitioner did not submit evidence regarding the number of such letters issued, media coverage of the selection for such letters, or similar evidence indicating that receiving such a letter is a nationally or internationally recognized award or prize for excellence in gynecology. The plain language of the regulation 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 her burden to establish every element of this criterion. Finally, even if the petitioner were to establish that her "Dear Author" letter equates to a nationally or internationally recognized prize or award for excellence in the field, which she has not, the statute requires the submission of "extensive documentation." Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires the alien's receipt of "nationally or internationally recognized *prizes* or *awards*" in the plural. [Emphasis added.] One such award does not meet the plain language requirements of this criterion.

Regarding the 1988 appreciation letter from the [redacted] Medical Sciences; the 1999 commendation letter from [redacted] -in-Chief of "Research in Medicine Journal" expressing gratitude for the petitioner's review of scientific articles; the 1998 letter from [redacted]

Beheshti University expressing gratitude for the petitioner's efforts as a research consultant; and the 1999 commendation letter from [redacted] there is no documentary evidence showing that these letters constitute nationally or internationally recognized "prizes or awards" for excellence in the field.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> Initially, counsel indicated that the petitioner is or was in the process of becoming a member of the S[redacted] In response to the director's request for additional evidence, counsel asserted that the petitioner is the only member of [redacted] from Iran and participates in their conferences and educational programs. Counsel contended that it is an honor for any physician and discusses the prestige of [redacted]onferences. Counsel also provided vague assertions about the actual membership criteria. In addition, counsel asserted that the petitioner is a member of [redacted] and the [redacted] and has made presentations at conferences sponsored by these entities. As stated above, 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. The petitioner submitted her membership cards for SGO and SGOC but no bylaws or other evidence from either society setting forth the membership criteria.
>
> The director concluded that the petitioner had not responded to the request for evidence of the membership criteria for the societies of which she is a member. On appeal, counsel reiterates his previous assertions and references the evidence documenting that the petitioner presented her work at conferences sponsored by these societies.
>
> According to the plain language of 8 C.F.R. § 204.5(h)(3)(ii), it is the petitioner's burden to demonstrate not only that she is a member of an association but that the association restricts membership to those with outstanding achievements as judged by national or international experts in the field. While the petitioner has complied with the first requirement, submitting her membership cards for [redacted] the record is absent any evidence of the membership requirements for either society. We will not presume exclusive membership criteria from the fact that the petitioner's abstracts were accepted for presentation at large symposiums organized by these societies. Conference presentations are comparable to published articles and will be considered below pursuant to the criterion set forth at 8 C.F.R.

§ 204.5(h)(3)(vi). As the record lacks the societies' bylaws or other evidence that would allow us to evaluate whether either of the petitioner's memberships is qualifying, the petitioner has not established that she meets this criterion.

As indicated in the AAO's appellate decision, the petitioner's response to the director's request for evidence included her membership cards for the [redacted] and the [redacted] Both of these membership cards have an expiration date of December 31, 2008. There is no evidence showing that the petitioner held membership in either of the preceding organizations as of the petition's July 27, 2007 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).

The petitioner's SGO membership card identifies her as an "Associate Member." On motion, the petitioner submits a 2008 SGO membership directory also identifying her as an "Associate Member" (page 87). The petitioner also submits a copy of the [redacted] Bylaws which state:

(a) Full Member. To be eligible to be a Full Member, an individual must meet the following requirements:
i.) be a Diplomate of the American Board of Obstetrics and Gynecology, or its equivalent as specified in duly adopted policy of the Society;
ii.) have completed an American Board of Obstetrics and Gynecology-approved post-residency fellowship training program in Gynecologic Oncology;
iii.) be certified in special competence in Gynecologic Oncology; and,
iv.) have been a Candidate Member of the Society of Gynecologic Oncologists for at least two (2) years.

(b) Associate Member. An individual who does not otherwise qualify' to become a Full Member may apply for Associate Membership. To be eligible for Associate Membership, an individual must meet the following requirements:
i.) be committed to improving the care for patients with gynecologic cancer;
ii.) be committed to advancing knowledge and raising standards of practice in gynecologic oncology; and,
iii.) be committed to encouraging research in gynecologic oncology.

* * *

(d) Honorary Member. To be eligible for Honorary Membership, an individual must have made outstanding contributions in the field of gynecologic oncology, as determined by the council.

We note that on June 18, 2008, the director requested the petitioner to submit "specific evidence of membership criteria" for the above societies. 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 evidence and now submits it on motion. Accordingly, the AAO will not consider this evidence in this proceeding. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Nevertheless, the submitted documentation does not establish that the petitioner's "associate" membership in the SGO requires outstanding achievements, as judged by recognized national or international experts in the petitioner's field. We cannot ignore that the requirements for "Full Member" and "Honorary Member" in the SGO require a higher level of achievement.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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.*

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> [redacted] a professor at the [redacted] where the petitioner worked, asserts that the petitioner reviewed manuscripts submitted for publication to the *International Journal of Gynecology and Obstetrics* and several Iranian publications. [redacted] further asserts that the petitioner meets this criterion based on her service on a [redacted] in 1997. Counsel also listed several appointments without explicitly asserting that they serve to meet this criterion, including an appointment as a member of the "Editorial Board" of *Understanding Cancer*. The petitioner submitted a 1990 appointment order confirming her appointment as a research committee member at [redacted] where she was employed as a professor. Another notification dated May 24, 1997, from the same university, confirms that the petitioner "studied and evaluated" 16 research plans submitted by the Deputy Directorate for Research. A May 31, 1997 Notification confirms her study of two additional research plans approved by the university research council. The petitioner was reappointed to the research committee in 1999. A 1995 Notification states (grammar as it appears in the original):
>
> > In execution of para. 3-7 of the By-Law for Promotion of Faculty Members, subject of effective cooperation plan at the official research council of the university and rendering specialized consultation services and in execution of para.2 of the University Specialized Research Council at its 205th session, subject of qualified judges opinion poll on the research projects offered prior to be raised in research council sessions and prior to the issuance of active cooperation certificate of research and consultation services, this certifies that [the petitioner] proved her interests and qualifications for giving precise scientific opinions on Gynecology & Obstetrics research projects, following attendance at the First Research Methodology Workshop, and the council has also been benefited from her consultancy and specialized opinions of her.
> >
> > Since rendering services requires deep review of essays and reference books, total services of [the petitioner] covers 25 hours since the year 1986.

This notification is extremely ambiguous as to the petitioner's exact duties for and role on this committee.

The petitioner also submitted the Summer and Winter 2002 issues of *Understanding Cancer*. The title page is in English. The petitioner is not named among the 45 members of the Editorial Board. The record also contains a letter from [redacted], a professor at [redacted], confirming that the petitioner reviewed manuscripts for *Research in Medicine*, a journal of the university's faculty. Finally, the petitioner submitted a letter from [redacted] Editor of the *International Journal of Gynecology and Obstetrics.* [redacted] thanks the petitioner for her assistance reviewing manuscripts submitted to the journal. In response to the director's request for additional evidence of the significance of the petitioner's judging services, counsel discusses only the petitioner's manuscript reviews and submits letters acknowledging reviews for the *International Journal of Gynecology and Obstetrics.* The second letter asserts that the peer reviewers for this journal are selected from outstanding, internationally recognized experts in the field but also states that the petitioner was one of 439 reviewers over the past year.

The director concluded that inclusion as one of 439 reviewers was not indicative of or consistent with national or international acclaim. On appeal, counsel asserts that the petitioner served on the editorial board of *Understanding Cancer*. The petitioner submits the cover page of a different issue of the journal and a foreign language page from the journal. A name is highlighted and the petitioner's name is translated on the foreign language document. The translated name is not a certified translation and the highlighted name in a foreign alphabet is not discernable to us as the petitioner's name. As noted above, the English language editorial pages of the Summer and Winter 2002 issues lists 45 editors, none of whom are the petitioner. Thus, the petitioner has not established that she served on the Editorial Board of *Understanding Cancer*.

Much of the submitted documentation from [redacted] does not specify the nature of the petitioner's participation or the names of the individuals whose work she judged. Merely submitting documentary evidence reflecting that the petitioner participated in reviews without evidence demonstrating whose work she judged is insufficient to establish eligibility for this criterion.

On motion, the petitioner submits a page from *Understanding Cancer* listing her among 41 members of its editorial board, but once again the submitted English language translation of the document was not certified by the translator. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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.

Nevertheless, the evidence showing that the petitioner peer-reviewed articles for *International Journal of Gynecology & Obstetrics* meets the plain language requirements of the regulation at

8 C.F.R. § 204.5(h)(3)(iv). However, certain deficiencies pertaining to this evidence and the other documentation submitted for this criterion will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner has never specifically claimed to meet this criterion and the director did not address it. We note the submission of reference letters, published research articles and evidence that the petitioner has presented her work at conferences.
>
> The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume, however, that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. As will be discussed below pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), the evidence purportedly demonstrating the impact of the petitioner's scholarly articles is, in fact, minimal.
>
> There would be little point in publishing research that did not add to the general pool of knowledge 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. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.
>
> [redacted] a professor at [redacted] and one of the petitioner's collaborators, asserts that the petitioner worked on a project at [redacted] examining the role of nanobacteria in ovarian, uterine and omental serous carcinoma. Specifically, [redacted] explains that the petitioner formulated hypotheses, identified cases of interest and gathered clinical and laboratory data. [redacted] asserts that the petitioner's work on this project "will result in the publication of this research data." [redacted] then discusses the petitioner's recent research proposal, which had yet to produce results as of the date of filing. [redacted] does not explain how the results of the petitioner's unpublished research have already impacted the field such that her work at [redacted] can be considered a contribution of major significance as of the date of filing, the date as of which the petitioner must establish her eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N

Dec. 45, 49 (Reg'l. Comm'r. 1971). Finally, [redacted] notes that the petitioner has been involved in previous projects, the results of which she has published. [redacted] does not, however, provide any specifics about these projects or explain how they have already impacted the field at a level consistent with a contribution of major significance.

[redacted] who has coauthored articles with the petitioner, also discusses the petitioner's work on nanobacteria. [redacted] notes that nanobacteria had already been associated with heart disease, aortic and carotid plaques, kidney stones, polycystic kidney and prostate disease. [redacted] asserts that the petitioner is investigating whether nanobacteria "may play an important role in the calcification of the psammoma bodies, as well as in pathogenesis" of uterine and ovarian cancer. [redacted] speculates that this study "had an important clinical impact because it could determine biomarkers that will predict responsiveness to this agent, and ultimately result in an increase in survival of patients, with better quality of life." [redacted] does not assert that this work has already had a major impact on the field consistent with a contribution of major significance, such as by providing examples of independent hospitals adopting the petitioner's results into their diagnosis/treatment guidelines.

[redacted] also discusses the petitioner's prior research in Iran. Specifically, [redacted] asserts that the petitioner's first research project in 1982 involved the study of thyroid tuberculosis. [redacted] opines that this study "offers the very important *possibility* of helping clinicians to identify subsets of patients with cancer." (Emphasis added.) [redacted] further asserts that the petitioner also investigated tuberculosis of the female genital tract in Iran. While [redacted] asserts that the petitioner presented the results of this second study, he does not provide examples of how either tuberculosis study has impacted the field. [redacted] also fails to explain the significance of the petitioner's study of the causes of therapeutic abortions in Iran.

[redacted] asserts that the petitioner collaborated on several projects at New York University and [redacted], including investigations of osteoporosis, cervical cancer and anencephaly. Once again, while [redacted] asserts that this work was presented at conferences or published in journals, he does not explain how this work has impacted the field. As stated above, the regulations contain a separate criterion for the publication of scholarly articles and we will not presume that submitting evidence relating to that criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vi) creates a presumption that the petitioner also meets this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(v).

[redacted], a professor at [redacted], discusses the petitioner's skill in instructing in the dissection laboratory of one of [redacted] courses. [redacted] does not explain how the petitioner has impacted the field of obstetrics/gynecology.

[redacted] a professor at the [redacted] who has coauthored an article with the petitioner, predicts that the petitioner's work will benefit the national interest of the United States. At issue for the classification sought, and this criterion in particular, however, is whether the petitioner has demonstrated

contributions of major significance consistent with national or international acclaim in her field. [redacted] asserts that the petitioner's "stature as a Physician-Scientist" distinguishes her from other "leading experts in the field" because only two percent of medical graduates are physician-scientists. [redacted] is not persuasive. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998). Even if we accepted that most physicians are not engaged in clinical research, this fact would not create a presumption that every clinical research study is a contribution of major significance. [redacted] notes that the petitioner published two books and 20 articles in Iran, but does not provide examples of how any of these works have impacted the field.

The petitioner also provided several letters from colleagues in Iran providing general praise of her competence as a physician. None of these general job reference letters explain how the petitioner has made contributions of major significance.

While the record includes attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is respected by her immediate circle of collaborators, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that she meets this criterion.

The preceding reference letters are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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 that one would expect of a researcher or doctor who has made original contributions of major significance.

On motion, counsel points to presentations made by the petitioner at the [redacted] Meeting in June 2009 and the [redacted] in March 2010, but these presentations post-date the filing of the petition. As previously discussed, 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. 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. Nevertheless, there is no evidence showing that the petitioner's presented findings constitute original contributions of major significance in her field.

Counsel acknowledges that the recommendation letters from [redacted] did not include details of the petitioner's researches or articles or how they had a major effect on the field." The petitioner's motion includes citation results from [redacted] indicating that none of her individual articles had been cited to more than three times as of the petition's July 27, 2007 filing date. Several of the articles citing to the petitioner's work were published subsequent to the filing of the petition. As previously discussed, 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. Moreover, some of the results include self-citations by the petitioner and her coauthors. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. Ultimately, the limited number of independent citations to the petitioner's articles is not indicative of contributions of major significance in the field. Without evidence showing that the petitioner's work equates to original contributions of major significance in her field, we cannot conclude that she meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

In light of the above, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

On motion, counsel states:

> Except for one of the articles that was accepted before filing the petition (July 27, 2007), and published thereafter, the petitioner published more than twenty articles in the Persian and English languages but only five of them were written in English were [sic] considered. None of Persian articles were noted.

Counsel's statement is incorrect. The AAO's appellate decision stated:

> The petitioner authored two books and *several articles in Iranian publications* as well as in English-language publications. As noted by the director, one of the petitioner's English-language publications was accepted but not yet published as of the date of filing. On appeal, counsel reiterates that the manuscript had been accepted for publication prior to the date of filing. The petitioner must demonstrate her eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of scholarly articles in professional or major trade publications or other major media. Thus, the only evidence we can consider is evidence of scholarly articles that had already appeared in such publications prior to the date of filing. Significantly, an article only accepted for publication cannot garner the author any national or international exposure, let alone acclaim, until the article is

> actually published and distributed. Regardless, the petitioner had *several abstracts, articles and two books published* as of the date of filing. Thus, we will consider those publications.

[Emphasis added.]

We note that a large number of the petitioner's scholarly articles were published in *Shahid Beheshti University of Medical Sciences Journal of the Faculty of Medicine*, a publication of the university where the petitioner worked. Nevertheless, the petitioner has documented her authorship of scholarly articles in professional journals and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets this criterion. However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner has never claimed to meet this criterion. Nevertheless, the petitioner submitted several appointment letters, including appointments as the Director of Instructions for the Gynecology and Obstetrics Ward at [redacted] in 1995, a member of the research committee at the same institution in 1990 and 1999, and as a member of the examinations board at the same institution in 1996. Without an organizational chart or other evidence explaining how the above roles fit within the hierarchy of the university and information regarding whether the petitioner maintained these roles closer to the date the petition was filed, we cannot determine whether the petitioner meets this criterion.

On motion, counsel states:

> In addition to research committee member in her field in the University or Director of education, the document dated April 14, 1996 from Ministry of Health, Therapy, and Medical Education signed by [redacted] demonstrates that the petitioner was one of the Board Examiners in field of Obstetrician and Gynecology, and it, therefore, confirms that the petitioner is nationally acclaim and is one of the small percentage who has risen to the very top of her field of endeavor because Board Exam is the most important examination which is held once a year universally for written and oral examinations for certification for special comprehensive in obstetrics and gynecology.

The April 14, 1996 letter from [redacted] for [redacted] states that the petitioner was "appointed as a member of Examination Board in the field of gynecology and

obstetrics for a period of one year." The letter, however, does not specify the duties performed by the petitioner or identify her responsibilities. There is no documentary evidence showing that the petitioner performed in a leading or critical role as a temporary member of the Examination Board or that it had a distinguished reputation. Further, as indicated in the AAO's appellate decision, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the general hierarchy of the institutions that employed her. The petitioner's evidence does not demonstrate how her appointments differentiated her from the other doctors and researchers employed at her universities, let alone their tenured faculty. The documentation submitted by the petitioner does not establish that she was responsible for her employers' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that she meets this criterion.

Summary

In this case, we affirm our prior decision that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-1120. In the present matter, 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)(i), (ii), (iv), (v), and (viii).

In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(i), there is no evidence showing that the petitioner has received any qualifying prizes or awards for excellence in her field since her arrival in the United States in 2002. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as been *sustained. See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of her recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Regarding the petitioner's review of research plans and student work at Shahid Beheshti University in the 1990s, we cannot conclude that performing such institutional evaluations for her

university is evidence of sustained national or international acclaim. Further, even if the petitioner had complied with the regulation at 8 C.F.R. § 103.2(b)(3) and submitted a certified English language translation of the page in *Understanding Cancer* listing her among 41 members of its editorial board, which she has not, the reputation of the journal (such as its impact factor) is undocumented. As such, there is no evidence indicating that serving on its editorial board is indicative of national or international acclaim. Moreover, in regard to the petitioner's review of articles for [redacted] we cannot conclude that her level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. As previously discussed, the petitioner submitted documentary evidence indicating that she was among 439 individuals who peer-reviewed articles for *International Journal of Gynecology & Obstetrics*. We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has received and completed independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal as of the petition's filing date, we cannot conclude that her level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor.

Regarding the petitioner's original research findings discussed under 8 C.F.R. § 204.5(h)(3)(v), as stated above, they do not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)...." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a scientific researcher of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the petitioner has published scholarly articles in professional journals, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at www.bls.gov/oco on February 18, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://www.bls.gov/oco/pdf/ocos066.pdf. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* Further, the OOH states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." *See* http://www.bls.gov/oco/pdf/ocos047.pdf.

This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, the documentation submitted by the petitioner indicates that her body of published work has been minimally cited as of the petitioner's filing date. This level of citation is not sufficient to demonstrate that the petitioner's articles have attracted a level of interest in her field commensurate with sustained national or international acclaim at the very top of her field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. While the petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought, it appears that the very top of her field of endeavor is above the level she has attained. In this case, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as an obstetrician, gynecologist, and gynecologic oncologist, or with being among that small percentage at the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 AAO's September 21, 2009 decision dismissing the appeal is affirmed. The petition will remain denied.