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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: DEC 07 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

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 Director, Texas Service Center, denied the employment-based immigrant visa petition on November 27, 2009. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. The director erroneously dismissed the motion, and the AAO reopened the proceeding on its own motion to consider the merits of the petitioner's motion. The AAO's prior decision will be affirmed. The appeal remains dismissed and the petition remains denied.

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 petitioner's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "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.

The AAO dismissed the petitioner's appeal on December 28, 2010. The petitioner filed its motion on January 26, 2011. On motion, the petitioner submits a brief and additional documents.

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.

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[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).

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. The AAO's Motion to Reopen

On September 22, 2011, the AAO withdrew the decision of the director and reopened the matter pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision to consider the merits of the petitioner's motions to reopen and reconsider. In addition, the AAO introduced derogatory information into the record regarding the non-accreditation of Atlantic International University [AIU] in the United States. Finally, the AAO informed counsel that a new, fully, and accurately executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, must be submitted to authorize counsel to represent the petitioner. The AAO notes that in response to the AAO's notice, counsel has now submitted a properly executed Form G-28.

In its notice, the AAO indicated that the petitioner submitted several documents relating to AIU regarding the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), as well as documentary evidence reflecting that he received a degree of doctor of philosophy from AIU. Specifically, the AAO noted that AIU is not an accredited[2] university in the United States.[3] This fact is important as many jobs and professions will not accept degrees from unaccredited institutions. In fact, it is illegal in some states to use a degree from AIU to obtain employment, a license, or certificate to practice a trade.[4] While the petitioner claimed at the initial filing of his

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[2] According to the U.S. Department of Education's website, "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality." *See* http://ope.ed.gov/accreditation/, accessed on December 6, 2011 and incorporated into the record of proceeding.

[3] *See:* http://hawaii.gov/dcca/ocp/udgi/lawsuits/AIU; http://hawaii.gov/dcca/ocp/udgi/lawsuits/AIU/atlantic_intl_u_c.pdf; and http://hawaii.gov/dcca/ocp/udgi/lawsuits/AIU/atlantic_intl_u_sj.pdf, accessed on September 6, 2011, and previously incorporated into the record of proceeding.

[4] *See* http://www.thecb.state.tx.us/index.cfm?objectid=6941C34E-DF3E-4B42-288239D3FC3ACD29; *see also.* http://www.osac.state.or.us/oda/unaccredited.aspx, listings AIU as a school "not authorized to offer degrees in the state of Oregon" and noting that "some degrees cannot be used at all and some can only be used with a disclaimer. Individuals in violation are subject to a Class B misdemeanor. Both sites accessed on December 5, 2011 and incorporated into the record of proceeding.

petition that he "was given the highest possible grading that was ever given to any other similarly situated student [at AIU]" and his "thesis was considered to be outstanding by [his] supervisors," those personal accomplishments were recognized at an unaccredited institution in the United States and do not reflect an individual who is at the very top of his field of endeavor and whose achievements have been recognized in the field of expertise. *See* 8 C.F.R. § 204.5(h)(3).

In response to the AAO's notice, counsel submitted an "Apostille" from the Secretary of State of Florida, as well as the previously submitted doctor of philosophy degree from AIU, and argued that it is "proof of authenticity of the university." However, an apostille from the Secretary of State of Florida is simply a "procedure to have the Secretary of State certify or apostille a *document* as authentic [emphasis added]."[5] As such, the "Apostille" that was submitted by counsel only demonstrates that the document reflecting the petitioner's degree of philosophy for AIU is an authentic document. The issue, as raised in the AAO's notice, was not whether the petitioner's documentary evidence was authentic or not or even whether AIU exists; rather the issue was AIU's non-accredited status in the United States. The documentary evidence submitted by counsel fails to establish that AIU is an accredited university in the United States.

Counsel provided no other arguments and submitted no other documentary evidence to overcome the derogatory information in response to the AAO's notice. As AIU is not an accredited institution in the United States and the petitioner is prohibited from using his AIU degree in states such as Texas and Oregon, as will be discussed, his reliance on a thesis written at, a degree awarded by, and review of work at an unaccredited institution is not indicative of an individual at the very top of his field whose achievements have been recognized in the field of expertise and has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2) and 8 C.F.R. § 204.5(h)(3).

III. Motion to Reconsider

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 (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

[5] See http://notaries.dos.state.fl.us/. Accessed on November 1, 2011, and incorporated into the record of proceeding.

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).

In the AAO's prior determination, the AAO found that the petitioner failed to meet at least three of the regulatory criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). The AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner failed to eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), 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), the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In counsel's brief on motion, she argued that "[t]he analysis the service has advanced to substantiate its decision to deny approval does not take into consideration certain relevant facts that are material and critical to a fair determination as to whether the applicant has actually satisfied the minimum criteria." Counsel also submitted additional documentary evidence and argued that the new evidence establishes the petitioner's eligibility for the regulatory criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

The motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the AAO's prior decision. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Again, 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. Because counsel failed to raise such allegations of error in her motion to reconsider, counsel's arguments are not sufficient to meet the requirements of a motion to reconsider.

The motion is dismissed.

IV. Motion to Reopen

On motion, counsel submits additional documentation regarding the membership criterion, the judging criterion, the original contributions criterion and the leading or critical role criterion. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in

the previous proceeding.[7] On motion, counsel submits no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

Regarding the membership criterion, the AAO previously determined that the petitioner's six sigma black belt certification and project management professional (PMP) certification failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requiring "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." As it pertains to the six sigma black belt certification, counsel argues on motion that the AAO improperly evaluated the letter from [redacted] A review of the AAO's decision reflects that [redacted] letter was specifically and thoroughly discussed. Counsel failed to submit any new evidence regarding the petitioner's six sigma six certification that would meet the plain language of the elements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). With the current motion regarding the six sigma black belt certification, the petitioner has not met that burden.

Regarding the PMP certification, the AAO's decision found that the article submitted by the petitioner reflected that "PMP certification is comprised of 35 hours of classroom training and passing an examination." On motion, counsel argues:

> The most valuable certification in the Project management methodologies recognized by the global clients. [The petitioner] has been identified among the few percentage of Project Management professionals who owns a global PMP certification with excellent grades which is an outstanding achievement.

With no explanation regarding its prior unavailability, counsel also submitted a letter from [redacted] Project Management Institute (PMI), who stated:

> PMI is the world's leading not-for-profit membership association for the project management profession, with only 3,70,000 [sic] PMI professionals out of 35 million workforces in the Information Technology and other industries who use Project Management Methodologies.

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[7] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

> [The petitioner] is among the few percentage of Project Management professionals who owns a global PMP certification with excellent grades which is an outstanding achievement.

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

The letter from [redacted] fails to reflect any membership requirements for PMI, so as to establish that it requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. In fact, as stated in the AAO's previous decision, membership is based on 35 hours of classroom training and passing an exam. The AAO is not persuaded that attending training and passing an exam is tantamount to outstanding achievements, as well as they are not judged by recognized national or international experts in their disciplines or fields. While [redacted] stated that the petitioner "owns a global PMP certification with excellent grades which is an outstanding achievement," the issue is whether the petitioner was granted membership in an association that required outstanding achievements of its members. Although [redacted] considers the petitioner's ownership of a global PMP certification with excellent grades to be an outstanding achievement, there is no evidence to show that PMI requires outstanding achievements of its members. Furthermore, the petitioner failed to submit any documentary evidence establishing that membership with PMI is judged by recognized national or international experts in their disciplines or fields.

Regarding the judging criterion, the AAO determined that the petitioner's submission of an e-mail and a letter from [redacted] failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) that 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." On motion, counsel claims:

> The Service, while convinced that [the petitioner] may have reviewed others' work, had suspicion about the email sent to [the petitioner] by the university personnel and thus discounted his claim that he reviewed others' work in the field.

Contrary to counsel's assertions on motion, the AAO was not convinced that the petitioner may have reviewed others' work. In fact, the AAO determined:

> The record contains what appears to be an email from AIU addressed to "Student" asking that the individual "study the attached document in depth and send [them]

> opinions and statements" as well what "implications, professionally, this article will have on [the individual's] field of study." There is no evidence that this email was sent to the petitioner. Also, the record does not contain the attachment to the email or the date of the email. According to the AIU email, it appears that the articles sent by the university are "interesting and actual contents of future world trends." Even if the email was sent to the petitioner, it appears that the email is for the enrichment of the student and not a request to serve as the judge of the work of others in the petitioner's field.

Clearly, the AAO did not find that the petitioner has ever reviewed the work of others. Furthermore, on motion, counsel submitted another letter from [redacted] who stated:

> As a successful PhD graduate he reviews the articles and provides his feedback on Graduate student coursework which has been sent to him through email by AIU.
>
> He has judged the work of other students and his thesis has been used as a reference material by students at AIU and business professionals outside the university.

Again, counsel fails to provide any explanation regarding why this information was not previously presented. Regardless, as indicated in the AAO's evaluation of [redacted] previous letter, the additional letter also fails to include specific information, such as the date and names of the articles or work that was purportedly judged to demonstrate that petitioner has actually participated as a judge of the work of others. The lack of information in the letter gives the AAO no basis to make a favorable determination on the petitioner's participation as a judge of the work of others in the same or an allied field of specialization for which classification is sought consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). [redacted] failed to indicate who the petitioner judged, what the petitioner judged, or even if his participation as a judge was in the same or an allied field of specialization for which classification is sought. The submission of a letter that lacks any pertinent information and simply states that the petitioner "has judged the work of other students," without any supporting documentary evidence is insufficient to meet this regulatory criterion.

Regarding the original contributions criterion, the AAO determined that the petitioner's thesis at AIU did not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) that requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." On motion, counsel submits a letter from [redacted] who stated:

> [The petitioner's] thesis was a monumental academic development, in which he performed in an outstanding manner, and it represents a definite asset in our modern world within the context of globalization. In other words, [the petitioner]

> has true authority in the field, and his expertise will prove extremely useful in the world of academia as well as for an entire country at large.

Counsel provides no statement regarding why this information was not previously available for submission. Notwithstanding, the evidence must be reviewed to see whether it rises to the level of original business-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). [redacted] failed to explain how the petitioner's thesis "was a monumental academic development" or how it is "a definite asset in our modern world." Even if AIU, an unaccredited institution, considers the thesis to be a contribution of major significance, there is no evidence demonstrating that the thesis has been applied or impacted the field outside of AIU, so as to demonstrate that the petitioner has made an original contribution of major significance in the field. Similarly, as indicated above, [redacted] generally stated that the petitioner's "thesis has been used as a reference material by students at AIU and business professionals outside the university." Again, it appears that only students at AIU have used the thesis. [redacted] failed to identify a single business professional who has used the petitioner's thesis outside the university. The AAO is not persuaded that a thesis that may be used as reference material at an unaccredited university is evidence of an original contribution of major significance in the field.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that his thesis meets the elements of this criterion, which he has not, section 203(b)(1)(A) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires more than one original contribution of major significance in the field. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). As counsel only claimed the petitioner's eligibility for a single contribution, the petitioner clearly does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding the scholarly articles criterion, the AAO indicated that although the petitioner did not claim eligibility for this criterion the director determined that the petitioner's work "has only been distributed locally and used by the students at AIU." The AAO found the record contained

no evidence that any of the petitioner's work had been published in professional or major trade publications or major media. The AAO further determined this issue to be abandoned by the petitioner as he did not contest it on appeal. Despite failing to raise any argument before the AAO on appeal, on motion counsel now claims that "the definition of publication has been satisfied here [as] a thesis does go through peer review and thorough examination." Counsel submits no documentary evidence to demonstrate the petitioner's thesis was published, much less that it was published in a professional publication or other major media. 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). 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).

Finally, even if the AAO did not consider the issue to be abandoned and counsel had submitted supporting documents on motion, this criterion requires more than one publication. A single claimed publication is not sufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). *See Maramjaya v. USCIS* at *12; *Snapnames.com Inc. v. Chertoff* at *10.

Regarding the leading or critical role criterion, the AAO determined that the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) that requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." Specifically, the AAO determined that the letters from [redacted] Global) briefly described the petitioner's work but failed to demonstrate the petitioner's positions were leading or critical. Moreover, the AAO determined:

> While the letters mention projects in which the petitioner participated, the petitioner failed to establish, for instance, that his role directly led to the success and accomplishments at any of the companies mentioned so as to establish the petitioner's leading or critical role. Moreover, the letters of recommendation are general and broad in nature when describing the petitioner's specific roles, responsibilities, and accomplishments. In addition, the petitioner failed to submit documentation establishing that the organizations or establishments mentioned have a distinguished reputation.
>
> Additional evidence is needed in order to find that the petitioner meets this criterion. For example, there is no organizational chart or other evidence documenting how the petitioner's position falls within the general hierarchy of his employer, the subcontractor, or Merck. The record does not provide evidence demonstrating how the petitioner's position differs from those of other project managers employed at his company.

Again, on motion, counsel submitted additional letters without providing any explanation as to why such information was not previously available. Regardless, the letters from [redacted] state that the petitioner "has played a critical role in designing the support model and processes for [redacted] It is noted that all three letters are similarly written suggesting that one author was responsible for all of the letters. Nonetheless, while those familiar with the petitioner generally describe his positions as "critical," there is insufficient documentary evidence demonstrating that the petitioner performed in a critical role for [redacted]. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner has performed in a critical role. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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 *1,*5 (S.D.N.Y.). Moreover, counsel did not submit on motion an organizational chart or other evidence documenting how the petitioner's position falls within the general hierarchy at any of the companies, and evidence demonstrating how the petitioner's position differs from those of other project managers employed at his company as indicated in the AAO's decision so as to distinguish the petitioner's role from other employees in similar positions and demonstrate how his role was leading or critical. Counsel failed to establish that the petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In it prior decision, the AAO also conducted a final merits determination, incorporated here by reference, pursuant to *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). In that determination, the AAO specifically found that the petitioner failed to demonstrate: (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). In regard to this discussion, the AAO noted that the alien relied mostly upon recommendation letters praising the petitioner for his work as a project manager but ultimately determined that the record did not contain "extensive documentation" and could not support a finding that the petitioner was one of "the small percentage" at the top of his field who "has a career of acclaimed work." Counsel does not address this final merits determination on motion.

The motion is dismissed.

Beyond the AAO's previous determination, the petitioner's reliance on documentary evidence related to work at and a degree from an unaccredited institution is further evidence that the petitioner cannot be viewed as an individual whose "achievements have been recognized in the field of expertise," who "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." See 8 C.F.R. § 204.5(h)(2) and 8 C.F.R. § 204.5(h)(3).

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, the petitioner has not sustained that burden.

ORDER: The decision of the AAO dated December 28, 2010, is affirmed, the appeal remains dismissed and the petition remains denied.