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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

[redacted]

B2

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on January 6, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

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

I. Law

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

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

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

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

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

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

> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

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

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 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).

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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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on December 31, 2007, seeks to classify the petitioner as an alien with extraordinary ability as operations research analyst. The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3). [2]

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In counsel's brief on appeal, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

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

At the initial filing of the petition, counsel claimed that the petitioner reviewed articles for five journals without submitting any documentary evidence to support his assertions. 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). As such, the director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) and requested the petitioner to submit documentary evidence reflecting that he meets this criterion. In response, counsel stated that "evidence in the form of email correspondences between [the petitioner] and those who have requested his professional reviews" have been provided. In the director's decision, the director stated:

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

> The petitioner did provide a list of articles he has judged for various nationanl [sic] or internationaly [sic] publications in his area of expertise. In addition, he provided documentation that he has been asked to [omitted in the original decision]
>
> It must be demonstrated that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in the field. The judging must be on a national or international level and involve other accomplished professionals in the field. The articles are from national and international journals.

On appeal, counsel argues that "the Service's letter was cut off in the first paragraph, and it is therefore unclear exactly what the Service requires." The AAO concurs that it is not clear from the director's decision if the director determined whether the petitioner met or did not meet this criterion. The AAO will conduct a *de novo* review to determine the petitioner's eligibility for this criterion. *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).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." In response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner provided a self-created list of seven papers that he purportedly reviewed for journals and conferences, as well as "an invitation for consideration as a Special Issue Editor for an upcoming issue of the Journal of Electronic Commerce and Organizations." The petitioner also submitted a self-compiled document that purportedly contained reproduced emails reflecting requests for the petitioner to act as a reviewer. The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

> (i) The non-existence or other unavailability or required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.
>
> (ii) Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record

> does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

As indicated above, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, the submission of a self-compiled document of purported emails requesting the petitioner to review papers does not comply with the regulation at 8 C.F.R. § 103.2(b)(2) and lacks evidentiary weight in this proceeding. The petitioner failed to submit primary evidence of the request for review much less of his actual reviews for journals and conferences.

As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) specifically requires "the alien's participation . . . as the judge of the work of others," the mere request to serve as a judge without evidence of actually judging the work of others is insufficient to meet the plain language of the regulation. While the petitioner's list purports two reviews, the claim is unsupported by documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, it is noted that the purported emails indicate that the petitioner was required to access Internet-based systems to complete the reviews. For example, [redacted] indicated and described how the petitioner should access the review system utilizing http://reviews.aisnet.org/AMCIS2006. Furthermore, [redacted] indicated that "[r]eviews are being done on the Web" and described how to access the review system utilizing www.isiconference.org/2006/. In addition, Sharad Mehrotra stated that "[w]e are now ready to start the review process for ISI 2006. In a previous email communication, you should have received your START (a Web-based review system we are using to manage ISI-2006 papers) login/password information." Clearly, the petitioner could have submitted primary evidence from the respective websites demonstrating that he actually completed the reviews instead of submitting a self-compiled document of purportedly reproduced emails requesting the petitioner to review papers.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the

same or an allied field of specification for which classification is sought." The petitioner failed to submit sufficient documentary evidence demonstrating that he meets the plain language of this regulatory criterion.

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

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

In the director's decision, he concluded that the petitioner established eligibility for this criterion. Specifically, the director stated:

> The record contains testimonial letters from colleagues of the petitioner stating the petitioner has expertise in his field, and he has been involved in significant research projects. The research projects are in his field of expertise and have received national and international recognition. The testimonials assert that the petitioner's expertise in management information systems is such that other researchers or scientists in his field have recognized his expertise in the field. style. [sic] An example given was by [redacted] of the Center of Management Information at the University of Arizona regarding the petitioner's research on the "Deception Detection" project, which has significant implications regarding national security. [redacted] stated the petitioner designed and developed a multimedia system for deception detection training. It provides instruction based on real life situations, and it offers anywhere/anytime training. In addition, the petitioner participated in designing a software tool for automated deception detection through test analysis. This is a major contribution to the petitioner's field of expertise and a[n] important issue for the world which is national security. The petitioner meets the requirements of this element.

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

Although the director based his decision on eight testimonial letters, a review of those letters fail to indicate that the petitioner has made any original contributions of major significance in the field. For example, [redacted] letter, which was the only letter referenced by the director, briefly described the petitioner's roles for the "Deception Detection" project conducted by the

University of Arizona and funded by the U.S. Department of Department. In describing the significance of the project, [redacted] stated:

> The results of this program were highly successful and compared quite favorably with other existing deception detection programs. It goes without saying that the success of this program could not have been achieved without the considerable contributions of [the petitioner].

While [redacted] indicated the petitioner's contributions to the project, the letter falls far short in demonstrating that the petitioner's contributions have been of major significance in the field. [redacted] failed to provide specific information detailing the impact or influence of the project beyond the confines of the University of Arizona. In fact, [redacted] failed to indicate, for example, that the U.S. Department of Defense is using the project or even decided to adopt it, so as to establish that the petitioner has made an original contribution of major significance in the field. Simply achieving "successful results" or working on an experiment or project is insufficient to establish that the experiment or project is of major significance in the field unless the petitioner can demonstrate the substantial impact of it on the field.

In addition, the petitioner submitted a letter from [redacted] who stated:

> At Google Inc., [the petitioner] was a key member of several projects that drastically improved the efficiency of the world-renowned Google search engine. To begin, employment at Google is reserved for only the most extraordinary talents in technology – essential to their maintained dominance in the industry. From the get-go, [the petitioner] exhibited a compelling thorough understanding of the complicated dynamics of server extraction that exceeded that of his colleagues. He was a truly invaluable asset.

Again, [redacted] failed to provide specific information explaining how the petitioner's contributions have been of major significance in the field. Instead, [redacted] indicated that the petitioner was a key member of several projects at Google, Inc. [redacted] failed to provide any details demonstrating the significance of the petitioner's work at Google, Inc., let alone to the field as a whole. For example, [redacted] failed to describe any project that the petitioner was involved in and how the petitioner "drastically improved" Google's search engine. The lack of specific information provides no basis to demonstrate that the petitioner's contributions to Google, Inc. have been of major significance in the field.

Furthermore, although the majority of the letters briefly describe the petitioner's research and work, they refer to the significance of the petitioner's contributions in terms of future speculation. For instance, [redacted] stated that the petitioner's research "*will* provide a cost-effective solution [emphasis added]." In addition, [redacted] stated that "[i]mproved methods of instruction *would* undoubtedly provide a substantial benefit to the United States as a whole [emphasis added]." Moreover, [redacted] stated that the petitioner's "research encompasses a wide range of significant issues which I am confident *will*

become ever more salient in the coming years [emphasis added]." Further, [redacted] stated that the petitioner's "innovative work *will* benefit not only the international scientific community but also many *future* students at the University of Arizona, and elsewhere, who *will* be using the advanced distance learning systems and tools he invented and developed [emphasis added]." Also, [redacted], stated that the petitioner "is a uniquely talented individual with the *potential* to make both theoretical and practical contributions [emphasis added]."

A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings he has made are not currently being implemented in his field. While the AAO does not dispute the originality of the petitioner's research and findings, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's research and work, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

Also, some of the letters refer to the petitioner's skills, knowledge, and talents. For example, [redacted] stated:

> [The petitioner] always brought a passion to his research and development work. Impressively, his skills are not relegated to this sector alone, as he displays a broad and comprehensive knowledge of areas outside his research such as pattern recognition, collaboration and database technologies. Versatility of this kind is rare indeed, and explains why he has been recruited to work for such prestigious organizations and Google Inc.

However, merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of*

New York State Department of Transportation, 22 I&N Dec. 215, 221 (Comm'r 1998). The recommendation letters fail to indicate how the petitioner's skills and "versatility" are original contributions of major significance in the field.

Moreover, several of the letters refer to the publications of the petitioner's work in journals. For instance, [redacted] stated that "[t]he publication of articles in these prestigious journals is proof in itself of his research prowess, and further substantiates [the petitioner's] research as significant." The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume 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 regulatory requirement that a petitioner meet at least three separate criteria. The scholarly articles are, however, relevant to this criterion with regard to the impact they have had on the field as is demonstrated by citations.

At the initial filing of the petition, the petitioner submitted two articles that cited the petitioner's work one time each ("Matching Slides to Presentation Videos Using Sift and Scene Background Matching" at the 8th ACM SIGMM International Workshop on Multimedia Information Retrieval, 2006 and "Segmentation of Lecture Videos Based on Text: A Method Combining Multiple Linguistic Features" at the Proceedings of the 37th Hawaii International Conference on System Sciences, 2004). In counsel's brief on appeal, counsel claimed that three of the petitioner's articles were cited 19 times and eight of the petitioner's conference presentations were cited 39 times. However, counsel failed to submit any documentary evidence supporting his assertions. 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). It is noted that counsel claimed that a minimum of 22 citations from the petitioner's articles and conference presentations were cited after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Therefore, even if documentation of citations had been submitted, the AAO would not consider any that post-dated filing.

Regardless, while the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field.* In this case, the record of proceeding does not establish that any of the petitioner's articles have ever been cited and his conference presentations have only been cited two times. Again, even if counsel submitted documentary evidence supporting his assertions, the AAO is not persuaded that 36 citations at the time of the original filing of the petition, including 8 purported citations for the highest cited article, are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to

submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. Likewise, many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field. In fact, as cited above, the petitioner submitted documentary evidence reflecting that his conference presentations were cited only two times. Again, while the presentation of the petitioner's work at conferences was shared with others and may be acknowledged as original contributions based on the selection of them to be presented, the AAO is not persuaded that presentations of the petitioner's work at a few venues are sufficient evidence establishing that the petitioner's work is of major significance to the field as a whole and not limited to the engagements in which they were presented. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field.

The AAO notes here that the petitioner submitted two "U.S. Provisional Patent Application[s]." Notwithstanding that the record fails to establish that the petitioner has been awarded the patents, there is no indication that the petitioner is actually the author or owner of the patent applications. Regardless, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner made a contribution of major significance in the field through his development of this idea.

While those familiar with his work generally describe it as "exceptional," "outstanding," and "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (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 of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion. Therefore, the AAO withdraws the decision of the director for this criterion.

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

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

In the director's decision, although he found that the petitioner published articles in journals, he found that the petitioner failed to establish eligibility for this criterion because the petitioner did "not demonstrate national or international acclaim." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The petitioner has submitted sufficient evidence demonstrating that he meets the plain language of this criterion. Therefore, the AAO withdraws the findings of the director for this criterion.

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

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

The director found that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." In counsel's brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be

abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

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

In the director's decision, he determined that the petitioner met this criterion. Specifically, the director stated:

> The petitioner must demonstrate that his salary is high when compared to all other Operations Research Analyst[s] in his field, including established research professors who have long completed their postdoctoral training. The petitioner must offer evidence that his salary places at the very top of his field. The petitioner did provide a salary evaluation from www.sarlary.com [sic]. It stated the top salary offered to a person in the petitioner's field is $63,197. The petitioner provided his W-2 (wage earning statement) from 2008, which shows he has [sic] makes over and beyond the highest salaried offered. His yearly salary for 2008 was $78626.26. The petitioner has met this element.

Upon a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion. As indicated above, the petitioner submitted a screenshot from http://swz.salary.com reflecting that the median salary in the 90th percentile for an "Operations Research Analyst *I* [emphasis added]" was $63,197 in the United States. Moreover, the petitioner submitted a copy of his 2008 Form W-2, Wage and Tax Statement, from Ambrose Employer Group LLC reflecting "[w]ages, tips, [or] other comp[ensation]" (Box 1) of $78,626.23. However, the petition was filed on December 31, 2007; the petitioner's Form W-2 reflects earning in 2008. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." However, median wage statistics do not meet the regulatory requirement. While the screenshot reflects that the petitioner's 2008 wages as reported on Form W-2 was barely in the 90th percentile, the AAO is not persuaded that the petitioner's salary was high when 10% of others in the field made more than the petitioner's offered salary. There is no evidence reflecting the top salaries in the field, so as to compare the petitioner's salary to the highest earners.

Notwithstanding the above, the screenshot submitted by the petitioner reflected only the median wages for a Level I Operations Research Analyst. According to http://swz.salary.com, there are at least five levels for an operations research analyst with varying degrees of education and work experience:

1. Operations Research Analyst – Level I (Entry Level) – Average Years of Experience: 0 – 1; Typical Education Level – bachelor's degree;[3] Median Salary: $48,886; 90th Percentile Salary: $62,910;[4]

2. Operations Research Analyst – Level II (Intermediate Level) – Average Years of Experience: 2 – 5; Typical Education Level – Master's Degree or MBA;[5] Median Salary: $61,624; 90th Percentile Salary: $78,690;[6]

3. Operations Research Analyst – Level III (Senior Level) – Average Years of Experience: 5 – 10; Typical Education Level – Master's Degree or MBA;[7] Median Salary: $77,235; 90th Percentile Salary: $96,674;[8]

4. Operations Research Analyst – Level IV (Senior Level) – Average Years of Experience: 5 – 10; Typical Education Level - Master's Degree or MBA;[9] Median Salary: $101,563; 90th Percentile Salary: $122,954;[10] and

5. Operations Research Analyst – Level V (Specialist Level) – Average Years of Experience: 5 – 10; Typical Education Level – Master's Degree or MBA;[11] Median Salary: $130,287; 90th Percentile Salary: $165,026.[12]

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[3] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-I-Job-Description.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[4] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-I-Salary-Details.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[5] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-II-Job-Description.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[6] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-II-Salary-Details.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[7] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-III-Job-Description.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[8] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-III-Salary-Details.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[9] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-IV-Job-Description.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[10] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-IV-Salary-Details.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

[11] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-V-Job-Description.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

While the petitioner did not demonstrate his eligibility based on median range statistics for a Level 1 Operations Research Analyst, clearly the median salaries for a Level IV and Level V are substantially higher than the petitioner's earnings on his Form W-2. In fact, the 90th percentile for Level II, Level III, Level IV, and Level V are higher that the earnings of the petitioner. Even if the AAO were to accept 90th percentile median wage statistics, which the AAO clearly does not, the 90th percentile for a Level V Operations Research Analyst reflecting a salary of $165,026 is more than double the earnings of the petitioner of $78,626.23. Obviously, when compared to others in the petitioner's field as a whole rather than limiting it to Level 1 or entry level operations research analysts, the petitioner does not command a high salary. The evidence submitted by the petitioner does not establish that he has commanded a high salary in relation to experienced professionals in his occupation. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

Finally, as indicated above, the only evidence submitted by the petitioner purportedly reflecting his salary was his 2008 Form W-2. However, the petitioner failed to establish that his "[w]ages, tips, [or] other comp[ensation]" (Box 1) reflected solely his salary or also included other remuneration for services such as bonuses or other compensation. Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." If the petitioner's earnings (Box 1) were based, in part, on remuneration for services, the petitioner failed to submit any documentary evidence demonstrating that his remuneration was significantly high when compared to others in his field. The petitioner failed to establish that his documentary evidence reflected only his salary or also included remuneration for services.

For all the reasons discussed above, the petitioner failed to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Therefore, the AAO withdraws the decision of the director for this criterion.

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[12] See http://swz.salary.com/SalaryWizard/Operations-Research-Analyst-V-Salary-Details.aspx. Accessed on November 15, 2011, and incorporated into the record of proceeding.

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1115. The petitioner met the plain language of the regulation for one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the final merits determination, the AAO must look at the totality of the evidence to determine the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has published scholarly articles, has made conference presentations, has had a scarce amount of his work cited by others, and has performed routine research. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Although the AAO found that the petitioner failed to meet the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian,* 596 F. 3d at 1121-11 to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The petitioner claimed to have reviewed seven papers for journals and conferences, as well as being requested to serve as a special editor. The AAO notes that peer review is a routine element of the process by which articles are selected for publication in

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

While the AAO found that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based his claim of eligibility almost entirely on recommendation letters. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from individuals, especially when they are colleagues of the petitioner without any prior knowledge of the petitioner's work, supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Again, none of the letters submitted on behalf of the petitioner reflect any original contributions of major significance made by the petitioner. Furthermore, 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 an operations research analyst 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."

Moreover, the AAO determined that the petitioner met the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). A review of the documentary evidence reflects that the petitioner authored nine papers and conference presentations. submitted 13 publications. However, the petitioner has not established that the minimal publication of such articles demonstrates a level of expertise indicating that he is among that

small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to researchers, the AAO will also evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner demonstrated that his work was independently cited by others two times. The AAO is not persuaded that such minimal citations are sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Finally, the AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Although the AAO found that the petitioner did not meet the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner submitted documentary evidence that clearly reflected that he does not earn a high salary compared to others with a career of acclaimed work and reflective "of that small percentage who have risen to the very top of the field of endeavor" 8 C.F.R. § 204.5(h)(2).

The evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as an operations research analyst. The regulation at 8 C.F.R. § 204.5(h)(3) requires "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that he has published his work and is praised by those with whom he has worked, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899. It does not follow that the petitioner who has not offered any evidence that distinguishes him from others in his field, should necessarily qualify for approval of an extraordinary ability employment-based visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was 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 himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.