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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

PUBLIC COPY

B2

[redacted]

DATE: MAY 23 2011 Office: NEBRASKA 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, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

On appeal, counsel submits a brief and additional evidence. For the reasons stated below, the petitioner has not established the beneficiary's eligibility for the classification sought. Moreover, the record raises questions regarding the beneficiary's intent to continue working in her area of expertise.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

I. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or

> international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's 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.* at 1121-22.

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

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one 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).

[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).

Id. at 1119-20.

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* 8 C.F.R. 103.3(a)(1)(iv); *Soltane*, 381 F.3d at 145; *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683 (recognizing the AAO's *de novo* authority).

II. Prior Nonimmigrant Visa Petition Approval

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of beneficiary's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. Analysis

A. Evidentiary Criteria

Initially, counsel asserted that the beneficiary's baccalaureate and two Master's degrees and her work towards a third Master's degree and Ph.D. are relevant evidence of her extraordinary ability. The

record contains only the beneficiary's baccalaureate, a single Master in Management degree and a transcript of credits towards a Ph.D. Regardless, while education is a relevant consideration for establishing exceptional ability pursuant to section 203(b)(2) of the Act, it is not a relevant consideration for establishing extraordinary ability pursuant to section 203(b)(1)(A) of the Act. *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) with the criteria at 8 C.F.R. § 204.5(h)(3).

Similarly, counsel initially asserted that the beneficiary's 22 years of experience in academia is a relevant consideration. Once again, while 10 years of experience is a relevant consideration for establishing exceptional ability pursuant to section 203(b)(2) of the Act, it is not a relevant consideration for establishing extraordinary ability pursuant to section 203(b)(1)(A) of the Act. *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(B) with the criteria at 8 C.F.R. § 204.5(h)(3).

At issue is whether the petitioner submitted qualifying evidence under the pertinent regulation, 8 C.F.R. § 204.5(h)(3). A discussion of those criteria follows.[2]

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

The petitioner initially submitted several certificates and submitted additional evidence relating to the entities issuing those certificates in response to the director's request for additional evidence. The director concluded that the petitioner had not established that the beneficiary's certificates were nationally or internationally recognized prizes or awards. Counsel does not challenge that determination either on motion or on appeal.

The certificates of recognition the petitioner submitted are all from institutions with which the beneficiary has worked either directly or by recruiting students to participate in the institutions' international programs. The title of the recognition, such as "international recognition" from the American Hospital Academy in Hilton Head for whom the beneficiary recruited students, are not determinative. It is the petitioner's burden to demonstrate the recognition of these awards. In addition, some certificates simply recognize the beneficiary's participation in events, including as a speaker. These certificates are not nationally or internationally recognized prizes or award for excellence. Other certificates recognize academic accomplishments as a student. Such certificates are not nationally or internationally recognized awards or prizes for excellence in the field of education. Finally, some of the certificates recognize volunteer work, such as the certificate from Community Extension Services. These certificates are not prizes or awards for excellence in the field of education.

In light of the above, the director's determination that the petitioner did not submit qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i) is correct.

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

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.

Initially and in response to the director's request for additional evidence, counsel asserted that the petitioner was submitting evidence of the beneficiary's membership in qualifying associations. The director determined that the associations of which the beneficiary is a member do not require outstanding achievements. Counsel does not contest that conclusion on motion or on appeal.

The only association of which the beneficiary is a member for which the petitioner submitted membership requirements is the Nutritionist-Dietitians' Association. The record establishes that the association initiated "Continuing Professional Education as a requirement for renewal to Active Membership." This information does not suggest that the association requires outstanding achievements for admission to membership.

In light of the above, the director correctly determined that the petitioner did not submit qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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

In response to the director's request for additional evidence, counsel included "4" among the regulatory criteria the beneficiary allegedly meets. Counsel, however, failed to address what evidence the petitioner was submitting in support of that assertion. The director concluded that the record did not contain evidence of the beneficiary serving, either individually or on a panel as "a judge." Counsel does not contest this conclusion on appeal or on motion.

The record contains no evidence that the beneficiary served individually or on a panel as "a judge" (as opposed to having incidental review responsibilities as a teacher or a dean). Thus, the AAO concurs with the director's determination that the record contains no evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iv).

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

On appeal, counsel asserts that the director failed to consider the beneficiary's development of a seasoning packet using [redacted] sometimes referred to as [redacted] and her development of curriculum that counsel asserts has benefitted other schools and programs.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, has some meaning. To be considered a contribution of major significance in the field of education, it can

be expected that the impact would already be apparent in the field at the national level. Otherwise, it is difficult to gauge the impact of the beneficiary's work.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of contributions in the plural, consistent with the statutory requirement for extensive evidence. 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.[3]

The record contains a letter inviting the beneficiary to speak about food safety at the Philippine Department of Trade and Industry (DTI) and a certificate confirming the beneficiary's presentation on the subject of food safety. The speech was part of Consumer Welfare Month, sponsored by DTI and the Naga City Price Coordinating Council. The event took place in Naga City, where [redacted] the institution where the beneficiary served as a dean, is located. Thus, this evidence does not demonstrate the beneficiary's influence beyond Naga City.

The record contains manuscripts entitled '[redacted] and [redacted] presented to the Research and Development Center of USI by nine faculty members including the beneficiary. The record contains no evidence that the beneficiary published this manuscript.

In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted] a professor and researcher at [redacted] asserts that the beneficiary "served as primary mentor and supporter on the attempt of doing the department's experimental research" relating to [redacted] seasoning. [redacted] continues:

> This citation is hereby given to [the beneficiary], who made an important contribution in the initial planning and conceptualization of the experimental research, and gave the author innovative ways to ultimately achieve the highest level of research for national support and funding.

[redacted] further asserts that a national technical committee of the Department of Science and Technology and the Philippine Council for Industry and Energy Research evaluated and funded the

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[3] *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *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).

project for production and commercialization. While funding may demonstrate that a project has promise, not every funded project is already a contribution of major significance.

On motion, the petitioner submitted an affidavit from the beneficiary asserting that she is known in the Philippines as the [redacted] and that the project "has now reached a near successful conclusion due to the Philippines Department of Agriculture, as well as the Department of Science and Technology granting [redacted] funding to bring the [redacted] to market." The beneficiary further asserts that development is in the final stages and that the seasoning will be available for distribution to local food and nutrition stores in two to three years. On appeal, the beneficiary asserts that she donated a pending patent for the seasoning mix to [redacted] but still claims to be pursuing the marketing herself.

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, the beneficiary does not explain how a product that has yet to be marketed can constitute a contribution of major significance. Furthermore, the beneficiary does not explain how this project could be considered a contribution to the field of nutrition education rather than the culinary arts.

On appeal, the petitioner submits letters purporting to document the impact of the beneficiary's curriculum. [redacted] Acting Food Service Manager at the University of the Philippines in Quezon City, asserts that the beneficiary began developing training students in the 1990's and that she "shared her vision of creating training standards." [redacted] continues:

> This development model has been considered in our commitment for the affiliating program, to continue providing excellent competency-based training for Nutrition and Dietetics and Food Service students.
>
> The U.P. Food Service would like to acknowledge [the beneficiary's] excellent contributions to this institution, an ideal premise for Food Service Practicum Program.

This letter is extremely vague and ambiguous and does not affirm that the University of the Philippines adopted the curriculum for the Bachelor of Science in Food Service and Institutional Management" that the beneficiary developed.

In her earlier letter, [redacted] University of Nueva Caceres in Naga City, asserts that the beneficiary has "carried out invaluable contributions to her school, the [redacted] and other Colleges and Universities of the region by guiding students to participate in international learning experiences" in Singapore and the United States. [redacted] does not explain how this impact extended beyond the students at USI or in Naga City.

In a second letter submitted on appeal, [redacted] discusses the beneficiary's Master thesis study in 2000 on eating practices in Naga City that "has brought significance directions for the students to undergo related studies." [redacted] asserts that nursing students at the University of Nueva Caceres "were motivated and inspired by the model [the beneficiary] designed for her study." [redacted] provides no examples of nursing students publishing work that cites the beneficiary's thesis, which is itself unpublished. Instead, [redacted] asserts that students attended the beneficiary's [redacted] seminar. [redacted] does not assert that the University of Nueva Caceras adopted the beneficiary's curriculum for a Bachelor of Science in Food Service and Institutional Management. This letter does not demonstrate the beneficiary's influence beyond Naga City where [redacted] is located.

The petitioner also submitted a letter purportedly from [redacted] Dean of the Nursing Department at Naga College. The letter is unsigned and, thus, has no evidentiary value. Regardless, the beneficiary worked as a part time professor at that college and the letter would not establish the beneficiary's impact beyond Naga City.

In light of the above, the petitioner has not demonstrated the impact of the beneficiary's curriculum beyond institutions where she has taught in Naga City.

The petitioner did submit additional general reference letters. [redacted] a research scientist at the Northern California Cancer Center, asserts that he "became acquainted with [the beneficiary] in 1999" and that he consults her on the assessment of dietary behaviors when developing hypotheses for epidemiological studies. [redacted] praises the beneficiary's contributions to [redacted] and her study, but does not explain how the beneficiary's influence of the beneficiary's leadership at [redacted] and unpublished study has extended beyond [redacted] or Naga City.

[redacted] an adjunct professor at Tufts University, explains that she met the beneficiary while doing field research in the Philippines. [redacted] states that the beneficiary arranged for [redacted] to give a seminar at USI because she attended the school previously. [redacted] affirms that the beneficiary contributed to [redacted] and Naga College and "would" contribute to academic programs at other institutions. This letter does not explain how the beneficiary has already impacted the field of nutritional education.

[redacted] Niagara University, states that she went to USI in 2006 to conduct a workshop on Vincentian Academic Service Learning. [redacted] confirms that the beneficiary was the Chairman of the Committee [redacted] for this visit and praises her work ethic. [redacted] does not provide any examples of how the beneficiary has impacted the field of nutrition education or even assert generally that the beneficiary has done so.

[redacted] an assistant professor studying for her Ph.D. at [redacted] characterizes the beneficiary as "innovative" and "outstanding." [redacted] notes that the beneficiary has been a

member of organizing committees for seminar workshops and is an involved manager [redacted] fails to explain how the beneficiary is impacting the field of nutrition education.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.[4] The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, 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) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[5] The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(v).

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[4] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[5] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

Initially, counsel asserted that the beneficiary "has been an invited speaker at several Nutritional conferences, and has published several scholarly articles in her area of expertise." While the petitioner submitted unpublished manuscripts, the petitioner submitted no evidence that the beneficiary had published these manuscripts in any forum, let alone in professional or major trade publications or other major media. The record also lacks published conference proceedings containing the beneficiary's work. The only evidence of speeches document presentations [redacted] where the beneficiary served as a dean and the Consumer Welfare Month event in Naga City where [redacted] is located. Counsel did not advance this claim in later filings.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

The beneficiary served as Dean of the [redacted] at [redacted]. The petitioner also submitted evidence that the Philippine Commission on Higher Education issued an Award of Distinction to [redacted] in 2001 and a Plaque of Recognition in 2008. The director concluded that the role of dean was not leading or critical for [redacted]. The director noted that [redacted] employed seven deans and other administrators above those deans. On motion and again on appeal, counsel notes the beneficiary's efforts in designing new curriculum for [redacted] that attracted additional enrollment at [redacted].

The record reveals that [redacted] issued a Citation of Recognition to the beneficiary for services during 2004 through 2006. The citation notes her work in developing international programs for students and dedication to academia. [redacted], [redacted]e of the Philippine Commission of Higher Education, certifies that as Dean of the Department of [redacted] the beneficiary "was one of the prime mover[s] in the enhancement and improvement of the curriculum for the opening of the new course, Bachelor of Science in Food Service and Institutional Management (BSFSIM)." On appeal, [redacted], President of [redacted] confirms the beneficiary's achievements at [redacted], including development of approved curriculum and increased enrollment.

While the beneficiary may not have played a leading role for [redacted] as a whole, the record adequately establishes that the beneficiary played a critical role for [redacted]. The plain language of the regulation, however, states that the petitioner must demonstrate that the beneficiary performed in a leading or critical role for organizations or establishments in the plural. This requirement is consistent with the statutory requirement for extensive documentation.

As the record documents only a single critical role for an organization with a distinguished reputation, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii).

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

The director concluded that the petitioner submitted qualifying evidence that meets the plain language requirements at 8 C.F.R. § 204.5(h)(3)(ix). The record does not support this finding.

In a joint letter, [redacted] of [redacted] confirm that the beneficiary "received a monthly compensation of 52,976.20 pesos. In support of this letter, the petitioner submitted the beneficiary's biweekly pay slips for August and September 2006. These pay slips reflect 10,250 pesos in "basic" pay and 10,738.10 pesos in "other" pay for gross pay of 20,988.10 pesos. The petitioner also submitted the beneficiary's honorarium biweekly pay slips for 5,500 pesos. These documents establish that the beneficiary earned an approximate basic monthly salary of 20,500 pesos (10,250 x 2) and a basic annual salary of 266,500 pesos (10,250 x 26). Adding her "other" pay and honorarium, she earned a monthly remuneration of 52,976.20 pesos and an annual remuneration of 688,690.60 pesos. In addition, [redacted], Director of Human Resources at [redacted] College, confirms that the beneficiary earned an average monthly stipend of 20,000 pesos as a consultant and part-time professor for that university.

In a separate letter, [redacted] confirms that the "basic remuneration" for deans at [redacted] ranged from 15,976 pesos per month to 21,000 pesos per month. [redacted] a budget officer for Camarines Sur Polytechnic Colleges, confirms that the deans at that college earn a monthly salary rate of between 13,300 pesos and 19,168 pesos. [redacted] Northeastern Philippines, confirms that the deans at that institution earn a "basic monthly salary" of between 14,400 pesos and 15,360 pesos. [redacted] at the University of Nueva Caceres, confirms that annual salaries for deans at that university are between 300,000 pesos and 360,000 pesos.

A comparison of the beneficiary's entire remuneration, including her basic pay, her "other" pay and her honorarium with the basic pay of other deans is not a useful comparison. The beneficiary's basic pay appears comparable with the basic pay of other deans in the Philippines. Without documentation as to the "other" pay and honorariums paid to these other deans, the petitioner cannot establish that the beneficiary's other remuneration is significantly high.

Finally, the fact that the beneficiary worked a second job at [redacted] is not determinative. A petitioner cannot establish that an alien earns a high salary or other significantly high remuneration by showing that the alien chose to work at more than one job.

As the petitioner did not provide evidence of the other remuneration beyond basic salary earned by other deans, the petitioner has not submitted evidence that would support a conclusion that the beneficiary's other remuneration was significantly high.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of the final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is 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." 8 C.F.R. § 204.5(h)(3). *See Kazarian,* 596 F.3d at 1119-20.

The beneficiary's services were clearly of value [redacted] which promoted the beneficiary to the position of dean and compensated her at least consistently with that position if not more. The position and compensation, however, appear commensurate with her years of experience in academia. Not every well compensated college dean enjoys national or international acclaim.

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. The beneficiary, an experienced college dean who has not published a single article, relies in part on her preliminary development of a seasoning packet that has yet to be marketed and has little relevance to the field of nutrition education. She also relies on the development of curriculum for a specific program at one university. The record contains no evidence that this curriculum is widely utilized in the Philippines. While the beneficiary has clearly benefitted her individual students through her promotion of study abroad programs in Singapore and the United States, she did not develop these programs herself; rather, she prepared her students to participate in programs developed by others. This evidence, even in the aggregate, does not demonstrate that the beneficiary enjoys sustained national or international acclaim or that she is one of the small percentage who has risen to the very top of the field.

III. Seeking to Work in Her Area of Expertise

The record also includes evidence that raises questions as to whether the beneficiary will primarily be working in her area of expertise, nutrition education. Initially, the petitioner affirmed that it was offering the beneficiary a position as a School Director. The petitioner submitted brochures establishing that it operates two nursing homes. It claims, however, that it is developing a continuing education training program for recertification of administrators. The petitioner submitted a two-hour course outline the beneficiary prepared for the petitioner, the petitioner's training brochure listing food and nutrition training courses, a handout for a two-hour course that is purportedly approved for continuing education, curriculum for in-house training and an unpublished Food Service Program Model. The petitioner did not submit any evidence that it is operating as a school or from the State of California confirming that it has approved the beneficiary's curriculum.

Significantly, the record contains several letters from individuals who have relatives staying at the petitioner's nursing homes. [redacted] confirms that he attended a nutrition workshop for staff, residents and family members where the beneficiary demonstrated the preparation of zucchini bread and smoothies. [redacted] however, states that the beneficiary is the only staff member his mother remembers and smiles when the beneficiary comes for a visit. [redacted] praises the beneficiary's hands on training for the petitioner's staff. The record does not explain how the beneficiary's duties as an educator of nutrition would involve interaction with patients. These letters suggest that the beneficiary is not a full-time director of a school.

IV. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the beneficiary has distinguished herself as a school director to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the beneficiary is an experienced university dean, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field. The record also raises questions regarding the beneficiary's intent to continue working in her area of expertise, nutrition education. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.