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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: NOV 03 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:

SELF-REPRESENTED

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

On appeal, the petitioner argues that he meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v), (vi), (viii), and (ix).[1] For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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

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

[1] Although the record of proceeding contains a Form G-28 from [redacted] signed by the petitioner for the underlying Form I-140, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B Notice of Appeal, state that if an attorney seeks to continue to represent the petitioner on appeal, the appeal must include a newly executed Form G-28 even if the record includes an older form from the same attorney. This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (February 2, 2010). The petitioner signed and filed his own appeal. Because the appeal does not include a new Form G-28, and because the appeal shows no sign of the attorney's involvement, the AAO considers the petitioner to be self-represented on appeal.

> 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 an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

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

> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[2] 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).

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

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[2] 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).

will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 12, 2010, seeks to classify the petitioner as an alien with extraordinary ability in mechanical engineering. The petitioner received his Ph.D. in Mechanical Engineering from [redacted] in [redacted]. At the time of filing, the petitioner was working for [redacted] as a Lead Rotating Equipment Engineer. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[3]

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

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

The petitioner submitted a May 21, 2010 letter from a representative of the American Society of Mechanical Engineers (ASME) stating that the petitioner is a "Member" in good standing. The letter also provides information regarding becoming a Member:

> Requires attainments equal to eight years of active practice in the profession of engineering or teaching.
>
> Attainment of a degree in an approved engineering curriculum or a baccalaureate degree in an approved engineering technology curriculum shall be accepted as equivalent to the eight year experience requirement.

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

The director concluded that demonstrating eight years of experience in the profession and holding a baccalaureate degree in an approved engineering technology curriculum do not equate to outstanding achievements. The director also noted that the petitioner failed to demonstrate that ASME membership eligibility is judged by recognized national or international experts. The AAO affirms the director's findings. There is no evidence showing that the ASME requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established 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.*

The petitioner submitted evidence indicating that he has authored scholarly articles. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *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 reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Thus, there is no presumption that every published article or presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. The petitioner did provide evidence that independent researchers have cited his work. The number of citations per article, however, is minimal. The petitioner's citation record, by itself, is not indicative of original contributions of major significance in the field.

The petitioner also submitted letters of support discussing his work.

[redacted] states:

> [The petitioner] had an outstanding academic record at KFUPM, and he is one of the top students I have encountered in my tenure in the graduate program of the university. . . . [The petitioner] has published a number of peer-reviewed international journal and conference papers. Among his internationally cited publications is a paper he authored solely entitled "Effects of Vaneless Diffuser Geometries on Rotating Stall," which was published in the *Journal of Propulsion and Power* in 2006. [The petitioner's] findings

> are of major significance because they have provided the industry with data to aid in numerical investigation of rotating stall. Design engineers throughout the industry are using this data to improve the design and operation of centrifugal compressors. The direct result is that compressors designed and operated with this data in mind function better by avoiding the stall limits identified in [the petitioner's] paper, thereby achieving optimum reliability and machine performance. Such optimal characteristics early-on, during the design phases, in turn maximizes overall plant efficiency and other plant activities, including production.

In response to the director's request for evidence, the petitioner submitted citation evidence from Google Scholar reflecting three independent cites to his article entitled "Effects of Vaneless Diffuser Geometries on Rotating Stall." The petitioner has not established that this minimal number of citations is indicative of an original contribution of major significance in the field. [redacted] asserts that "design engineers throughout the industry" are using the petitioner's data "to improve the design and operation of centrifugal compressors," but [redacted] does not identify those design engineers or provide specific examples of how the petitioner's work is being utilized by others in the field beyond his immediate projects.

[redacted] continues:

> In one ASME paper titled "On-Line Monitoring Software and Diagnostic Tool for Centrifugal Compressor Performance Evaluation," [the petitioner] detailed the successful use of customizable software that he created. . . . [The petitioner's] software is significant because it targets this problem in the industry, referred to as compressor and steam turbine fouling. In addition, it is extraordinarily innovative because it automates troubleshooting exercises. This means that engineers can research a multi-sectioned process compressor/turbine problem and pinpoint the specific component/section that is fouled without stopping production and taking the entire compressor or turbine apart to identify the component in need of repair or replacement. In short, downtime is decreased with the use of the software resulting in a significant cost benefit. Additionally, the software can evaluate machinery upgrades, confirm (or deny) vendor guarantees during shop/field testing of equipment, and can be installed online for continuous performance monitoring. The software has now been in use in the petrochemical industry for over eight years.

[redacted] comments that the petitioner's "software has now been in use in the petrochemical industry for over eight years," but he does not provide specific examples of industrial or commercial implementation of the petitioner's work beyond the petitioner's employer. For example, [redacted] does not indicate that SABIC has patented, licensed, or marketed the petitioner's software and diagnostic tool. Thus, the impact of the invention is not documented in the record. Further, there is no evidence showing that the petitioner's engineering papers are frequently cited by others in the field, that his software is being widely applied by others in the engineering field, or that his findings otherwise equate to original contributions of major significance in the field. To satisfy the criterion relating to original contributions of major

significance, the petitioner must demonstrate not only that his findings are novel and useful, but also that they have already made a demonstrable impact on his field as a whole.

[redacted] further states:

> In his current capacity, [the petitioner] serves as a subject matter expert in rotating equipment to support the execution of multimillion dollar petrochemical plants. He oversees all phases of execution, including multiple design phases, engineering (preparation of Invitation to Bid, evaluation of bids, etc.), construction, procurement and commissioning. He also serves as an in-house consultant expert, being specifically called upon to advise and resolve rotating equipment malfunctions at [redacted] numerous subsidiary and affiliate companies. He continues to develop and customize proprietary, in-house machinery performance monitoring software, both online and offline.

[redacted] does not provide specific examples of how the software developed by the petitioner has influenced others in the field or otherwise constitutes an original contribution of major significance in the field. In response to the director's request for evidence, the petitioner submitted documentation pertaining to various [redacted] projects in which he was involved. While the petitioner's work at [redacted] is important to his company's operations, there is no evidence demonstrating that his work is recognized beyond his employer such that his work equates to original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to a single research institution or employer.

[redacted], Professor of Mechanical Engineering, KFUPM, [redacted], states:

> [The petitioner] is a uniquely qualified professional who has demonstrated outstanding scientific and engineering skills in solving rotating machinery problems in the industry. [The petitioner] had an outstanding academic record and was one of the top students to have passed through the graduate program o[redacted] University of Petroleum and Minerals[redacted]. In addition, he obtained a first class honors grade in his undergraduate program.

Regarding [redacted]'s comments about the petitioner's academic background and scientific and engineering skills, assuming the petitioner's skills, academic training, and knowledge 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 certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998). It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

[redacted] further states:

> [The petitioner] has published a number of peer-reviewed international journal and conference papers. Among his internationally cited publications is a single-authored paper entitled "Effects of Vaneless Diffuser Geometries on Rotating Stall," *Journal of Propulsion and Power*, American Institute of Aeronautics and Astronautics, 2006, 22(3). The paper, resulting from an experimental investigation, described the effect of vaneless diffuser diameter and width ratios on the onset of rotating stall. The effect of varying blower speed on stall characteristics was also documented. The paper documents very important benchmark experimental data to aid numerical investigation of rotating stall, a precursor to one of the dreadful flow-induced vibration problem in centrifugal compressors and blower referred to as surge.

Regarding the petitioner's authorship of peer-reviewed international journal and conference papers, the AAO notes that his field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" 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). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work. In this case, there is no evidence showing that the petitioner's engineering articles are frequently cited, that his software tools are widely implemented in the industry, or that his work otherwise equates to original contributions of major significance in the field.

[redacted] continues:

> [The petitioner's] extensive research in flow-induced instabilities in centrifugal compressor and blowers, a prime area of research of great importance and relevance in machinery reliability and plant performance, resulted in his development, in-house, of a real-time centrifugal compressor and steam turbine performance monitoring software. The software, written in visual basic computer language, has been successfully utilized in centrifugal compressor and steam turbine fouling problem troubleshooting exercises, evaluating new machinery upgrades, confirming vendor guarantees during shop/field testing of equipment, installed online for continuous performance monitoring of critical compressors and steam turbines. . . . One of the peer-reviewed papers published by [the petitioner] on the successful use of this software is entitled "On-Line Monitoring Software and Diagnostic Tool for Centrifugal Compressor Performance Evaluation," published in *International Mechanical Engineering Congress and Exposition*, held in 2006, Chicago, illinois, USA, under the auspices of American Society of Mechanical Engineers. The capability of the software to accurately predict performance deterioration of a 45 MW, five section process gas compressor before and after turnaround (TIA), was discussed.

Dr. Sahin comments on the petitioner's article published in the proceedings of the *International Mechanical Engineering Congress and Exposition*, but there is no evidence showing that his article is frequently cited, that his findings are being widely implemented in the industry, or that his work otherwise constitutes an original contribution of major significance in the field. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific or business community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every mechanical engineer who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

[redacted] Professor of Mechanical Engineering, [redacted] states:

> The petitioner's extensive research in flow-induced instabilities in centrifugal compressors and blowers . . . resulted in his development of an in-house, real-time centrifugal compressor and steam turbine performance monitoring software. The software, written in visual basic computer language, has been successfully utilized in:
>
> - resolving centrifugal compressor and steam turbine fouling problems;
> - troubleshooting exercises;
> - calculating new machinery upgrades;
> - confirming vendor guarantees during shop/field testing of equipment.
>
> The software has also been installed online for continuous performance monitoring of critical compressors and steam turbines. The software has contributed significantly to resolution of problems, increased productivity/production and time and cost savings for "mega projects" of [the petitioner's] company. It has certainly contributed significantly to the Company's competitive advantage.

While the petitioner has developed performance monitoring software for utilization by his employer, there is no documentary evidence showing that this work for his company equates to an original contribution of major significance in the field. The documentation submitted by the petitioner does not establish that his work for [redacted] has significantly impacted the field beyond his projects for his immediate employer. Once again, a contribution to the petitioner's employer is not necessarily an original contribution of major significance to the field at large.

[redacted] states:

> I met [the petitioner] in 2006 when my company, [redacted] was retained to audit rotating machinery for [redacted]. . . . Later that year, I was exposed more extensively to [the petitioner's] work on an audit of [redacted] Project.

[redacted] goes on to discus several engineering projects involving the petitioner, but he does not provide specific examples of how the petitioner's work has notably influenced the industry at large or otherwise constitutes an original contribution of major significance in the field.

The AAO notes that the preceding reference letters are limited to the petitioner's professors at the [redacted] and a consultant who [redacted] projects involving the petitioner. While such letters are important in providing details about the petitioner's work on various projects, they cannot by themselves establish that his work is recognized beyond his alma mater or those with direct ties to his employer. 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 evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an engineering researcher who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, the AAO cannot conclude 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.*

The petitioner has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, we concur with the director's finding that the petitioner meets this regulatory criterion.

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

The petitioner submitted a May 21, 2010 employment verification letter from [redacted] Services Direct, [redacted], certifying that the petitioner is employed as a Lead Rotating Equipment Engineer, but the letter does not explain the significance of the petitioner's role to the company. At issue is whether the petitioner played a leading or critical role for an organization or establishment as a whole. Noticeably absent from the record is a letter of support from [redacted] top management detailing the nature and significance of the petitioner's role for the company. Moreover, the petitioner failed to submit an organizational chart or other evidence documenting how his position falls within the company's general hierarchy. A conclusion that the petitioner played a leading or critical role for his employer simply by competently working in a position that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that

employers do not typically hire individuals to fill roles that serve no purpose for the employer; yet not every employee for a distinguished organization meets this criterion. In determining whether the petitioner's role was critical the AAO looks at his performance in that role and how it contributed to the organization's activities beyond what is normally expected of its engineering staff. The petitioner's evidence does not demonstrate how his position differentiated him from the other mechanical engineers at [redacted], let alone the company's managers and corporate executives. The evidence submitted by the petitioner does not establish that he was responsible for [redacted] success or standing to a degree consistent with the meaning of "leading or critical role." Further, there is no documentary evidence showing that [redacted] has earned a distinguished reputation. The petitioner submitted excerpts from [redacted]s 2009 annual report, online material about the company printed from its website, and other internal company information, but the self-serving nature of this documentation is not sufficient to demonstrate that the company has a distinguished reputation. USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Aside from the preceding deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* No. CV 06-65-MO, 2006 WL 3491005 at *1,*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to submit supporting documentary evidence showing that his role and SABIC's reputation meet the elements of this criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

In light of the above, the petitioner has not established 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.*

The petitioner initially submitted a May 20, 2010 letter from [redacted]. stating that his "current annual taxable income is $503,432.00." In response to the director's request for evidence, the petitioner submitted his 2009 Form W-2, Wage and Tax Statement, from [redacted] Americas, Inc. reflecting earnings of $454,919.34. The petitioner also submitted national wage data for mechanical engineers from the Bureau of Labor Statistics demonstrating that he earns a high salary in relation to others in the field. Accordingly, we concur with the director's finding that the petitioner meets this regulatory criterion.

Summary

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(ii), (v), and (viii).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the ASME requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. The petitioner has not established that his membership is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the petitioner's original research work submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as stated above, it does not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a mechanical engineer 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." In this case, the record does not contain sufficient evidence that the petitioner's research findings and software tools had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary.

Regarding the documentation submitted for the category of evidence 8 C.F.R. § 204.5(h)(3)(vi), the AAO acknowledges that the petitioner has authored scholarly articles while pursuing graduate studies at the KFUPM and while working for SABIC. The Department of Labor's (OOH), 2010-11 Edition (accessed at www.bls.gov/oco on October 17, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://www.bls.gov/oco/pdf/ocos066.pdf. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the petitioner's citation history is a relevant consideration as to whether the evidence is indicative of the petitioner's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, the petitioner submitted citation evidence indicating that none of his articles has been cited to more than three times per article. This minimal level of citation is not sufficient to demonstrate that the petitioner's published work has attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies on a professional membership which has not been shown to require outstanding achievements, his published and presented work, citation evidence indicating that his work has been only minimally cited, his role as a Lead Rotating Equipment Engineer with SABIC, his high salary, and letters of support from a professional associate who audited his engineering projects at [redacted] and his professors at the [redacted]

The AAO notes that the petitioner's references' credentials are far more impressive. For example, [redacted] states:

> I am a Distinguished Professor of Mechanical Engineering and a faculty researcher in thermodynamics, materials and manufacturing engineering areas at [redacted] University of Petroleum and Minerals, [redacted] Some of my ancillary positions include editorial membership of many international journals and chair of the scientific committee of international conferences. In the last three years alone, I have published over 85 research papers in international journals.

[redacted]tates:

> I am a Professor in the Department of Mechanical Engineering at [redacted] I have been involved in more than 30 funded research projects carried out by the Research Institute and the Mechanical Engineering Department of my university, serving as a project manager for several of these studies. I have published more than 100 technical papers and a large number of reports . . . .

[redacted] states:

> I hold a Professor[ship] of Mechanical Engineering at the [redacted] with active research in Entropy generation minimization, Thermodynamic design optimization, Heat conduction, Thermodynamics and Heat Transfer, Computational Fluid Dynamics, and Computer Aided Design with many international technical papers publications and accomplished research projects.

According to the biographical information submitted with [redacted] letter, he has authored 60 conference publications.

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a mechanical engineer, or being among that small percentage at the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished 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.