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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B2

[redacted]

DATE: AUG 15 2012 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Nebraska Service Center, on August 6, 2009, 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 as a postdoctoral scholar. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of 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.

In the director's decision, he determined that the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Moreover, the director indicated that the petitioner's occupation did not apply to the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), and the petitioner failed to claim eligibility for the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). On appeal, counsel specifically challenges the director's decision regarding the judging criterion, the original contributions criterion, the scholarly articles criterion, and the leading or critical role criterion. Accordingly, the AAO considers the other previously claimed criteria to be abandoned and will not further discuss them on appeal. *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).

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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.

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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).

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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

> *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.*

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." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentary evidence establishing that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO withdraws the findings of the director for this criterion.

Accordingly, the petitioner 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 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." 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).

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[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

A review of the record of proceeding reflects that at the initial filing of the petition, the petitioner submitted documentary evidence reflecting that 16 of his scholarly and scientific articles have been cited 128 times but that includes 15 self-citations; thus reflecting 113 independent citations by other scientists and researchers. It is further noted that 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 submitted additional citations of his work that were published after the filing of his petition. 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. As such, the citation to the petitioner's work that occurred after the filing of the petition will not be considered to determine the petitioner's eligibility for this criterion.

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 petitioner submitted documentary evidence reflecting that his highest cited article. "Poly (hydroxybutyrate-co-hydroxyhexanoate) Promoted Production of Extracellular Matrix of Articular Cartilage Chondrocytes in Vitro," (*Biomaterials*, 2003) has been independently cited 28 times. Moreover, 12 of the petitioner's articles have been independently cited less than ten times, including four articles that have never been cited by others.

The AAO is not persuaded that such citations 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. 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 is not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

The petitioner's evidence includes documentation that he has presented his findings at various scientific conferences such as the 2008 Symposium on Advanced Wound Care and Wound Healing Society Meeting. 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.

Again, while the presentation of the petitioner's work demonstrates that his work 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 several 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. The petitioner failed to establish, for example, that the presentations were of major significance so as to establish their impact or influence beyond the audience at the conferences.

Moreover, the petitioner submitted a "Certification of Patent" for "A Method for Production of 3-hydroxydecanoate" on March 17, 2004, listing the petitioner as one of the inventors. However, the certificate fails to indicate the issuing authority of the patent. Regardless, the AAO 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. 215, 221 n. 7. (Comm'r 1998). 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. The petitioner failed to establish that his patent has been of major significance in the field.

Furthermore, a review of the record of proceeding reflects that the petitioner submitted recommendation letters. In general, the authors of the letters reflect that they were requested by the petitioner to review selected documentary evidence, including the petitioner's self-compiled curriculum vitae, and provide their professional opinions. For example, [redacted] stated that he "do[es] this evaluation merely on the basis of [the petitioner's] research publications and presentations and also his extensive curriculum vitae." It does not appear that Dr. [redacted] was aware of the petitioner or his original contributions prior to being contacted by the petitioner. Further, the determination of the petitioner's original contributions is not based on the authors' prior knowledge of the petitioner or his work but merely on the evaluation of the documents given to them by the petitioner.

Regardless, while the recommendation letters praise the petitioner for his work in the bioengineering field, they fail to establish that his contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance, [redacted] briefly indicated the petitioner's original research and findings, such as the biosynthesis of the chiral chemicals and scarless wound healing, however, Dr. [redacted] did not provide any explanation as to how the petitioner's research has significantly impacted the field, so as to demonstrate original contributions of major significance in the field. While the AAO does not dispute the petitioner's original research, the letter does not establish that his original research has been of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Similarly, Dr. [redacted] made broad statements without specifically explaining how the petitioner's research has been of major significance in the field. For example, Dr. [redacted] stated that the petitioner's research "has absolutely contributed to the synthesis of chiral medicines and other valuable substances," "[has] advanced our knowledge of fatty acid metabolism," and "renewed the emphasis on crystal behavior of biomaterials in tissue engineering applications." Again, [redacted] demonstrated the petitioner's original contributions but failed to provide any further details to support the statements reflecting that they have been of major significance in the field. Simply claiming that the petitioner's contributions have been of major significance in the field is insufficient without supporting the statements with specific, detailed information, so as to *demonstrate* that they have been, in fact, of major significance in the field.

Likewise, while Dr. [redacted] identified the petitioner's research findings, he failed to demonstrate that the petitioner's original contributions have been of major significance in the field. Instead, Dr. [redacted] emphasized the petitioner's original findings and referred to the petitioner's research being published in professional and scientific journals. 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. Moreover, while the publication of the petitioner's research and findings establish the originality of his work, it does not demonstrate that his work has been of major significance in the field. The AAO is not persuaded that every researcher or scientist who publishes his or her work in a professional or scientific journal also demonstrates that the work is of major significance in the field. Dr. [redacted] lack of any specific information indicating the significance of the petitioner's work on the field is insufficient to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The recommendation letters also speculate on the potential impact that the petitioner's research may have at some point in the future. For example, Dr. [redacted] stated that the petitioner "has made a significant contribution to the scar curing therapies, which *can* benefit millions of patients [emphasis added]." Further, Dr. [redacted] stated that the petitioner's research "*may* lead to the identification and modification of the important medicals for scar treatment [emphasis added]," "[i]t *will* be an excellent advancement for the clinical practice [emphasis added]," and the petitioner's "contribution *will* benefit a lot of patients in the United States [emphasis added]." Moreover, Dr. [redacted] stated that the petitioner's "findings *will* significantly benefit the chiral synthesis of many chemicals, which *will* promote the development of the chiral pharmacological industry [emphasis added]," the petitioner research "*will* promote cancer research and *potentially* save millions of lives in the near *future* [emphasis added]," and the petitioner's "contributions *will* benefit Americans with chronic non-healing wounds and reduce healthcare costs [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. Again, while the AAO acknowledges the originality of the petitioner's findings, the letters do not indicate that the field is widely applying the petitioner's research findings, so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while the AAO does not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, 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). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. 884, 886 (BIA 1989) (citing *Matter of Atembe*, 19 I&N Dec. 427, 429 (BIA 1986); *Matter of Drigo*, 18 I&N Dec. 223, 224-225 (BIA 1982); *Matter of Bardouille*, 18 I&N Dec. at 116)). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977) emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977), which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

Many of the letters proffered 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 as both novel and of great potential interest, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

While those who submitted recommendation letters of the petitioner's behalf describe his work as "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. 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. *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 the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without 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. *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 (Commr. 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.

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.*

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." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentary evidence establishing that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, the AAO withdraws the findings of the director for this criterion.

Accordingly, the petitioner established that he meets this criterion.

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

At the initial filing of the petition, the petitioner claimed eligibility for this criterion based on recommendation letters by Dr. [redacted], Dr. [redacted] Dr. [redacted] and Dr. [redacted] In the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the director stated:

> The record discusses the petitioner's research while working at "a world-leading research institute." While scientific pursuits are certainly worthy and important, the evidence is not sufficient that this role goes beyond the general career path of a research scientist/associate.

In response to the director's request for additional evidence, counsel did not contest or address the director's issues or concerns regarding this criterion. In the director's denial of the petition, the director concluded that the petitioner did not claim to meet this criterion. On appeal, counsel states that the petitioner did claim eligibility for this criterion at the initial filing of the petition. Counsel does not address on appeal why he did not respond to the director's request for additional evidence regarding this criterion. Moreover, on appeal, counsel submits essentially the same argument that he made at the initial filing of the petition by simply quoting the reference letters. Notwithstanding, the AAO will determine whether the reference letters demonstrate the petitioner's 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 [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. Moreover, the business or nature of the organization is not determinative; rather the issue here is the organization's overall reputation.

In Dr. [redacted] letter, he stated that the petitioner was "an indispensable researcher in my research group [at Tsinghua University in Beijing, China]." However, Dr. [redacted] failed to discuss the petitioner's role in the research group, department, or university as a whole. Instead, as indicated in the original contributions criterion, Dr. [redacted] primarily discussed the petitioner's original research and findings. Without specific information demonstrating how the petitioner's role was leading or critical, simply stating that the petitioner was "indispensable" or his position was "key" is insufficient to meet the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Furthermore, the petitioner failed to submit any documentary evidence to establish that Tsinghua University has a distinguished reputation.

Similarly, Dr. [redacted] also indicated that the petitioner has been a "key researcher" in the group at the Department of Surgery at the University of Southern California and in the Department of Orthopaedic Surgery at the University of California, Los Angeles. However, besides serving in a role as a researcher, Dr. [redacted] failed to provide sufficient specific information to establish that the

petitioner has performed in a leading or critical role. Once again, Dr. [redacted] discussed the petitioner's research but failed to demonstrate how the petitioner's role was leading or critical. Moreover, the petitioner failed to submit any documentary evidence demonstrating that the Department of Surgery at the University of Southern California or the Department of Orthopaedic Surgery at the University of California, Los Angeles has a distinguished reputation.

Regarding the reference letters from Dr. [redacted] and Dr. [redacted] they indicate that their opinions are based on documentation that was given to them by the petitioner rather than personal or firsthand knowledge of the petitioner's roles. For example, Dr. [redacted] indicated that he "thoroughly reviewed [the petitioner's] other supporting documentation presented to [him]" and based his opinion as an independent expert. Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. Id. (defining "written testimony"); see also id at 1514 (defining "affirmative testimony"). Further, depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. 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).

While the letters from Dr. [redacted] and Dr. [redacted] did not demonstrate the petitioner's eligibility for this criterion, Dr. [redacted] and Dr. [redacted] at least worked and supervised the petitioner as opposed to the letters from Dr. [redacted] and Dr. [redacted] who have never worked with the petitioner. Regardless, Dr. [redacted] simply indicated that the petitioner is a "key scientist in Dr. [redacted] lab at the Department of Orthopaedic Surgery of the University of California, Los Angeles." and Dr. [redacted] simply indicated that the petitioner "plays an active and leading role in various projects aiming to improve our knowledge and present technology in wound healing and tissue engineering." Neither letter provided any further elaboration on the roles of the petitioner that would suggest a leading or critical role. In fact, Dr. [redacted] did not even indicate where the petitioner performed his "active and leading role."

As discussed above, the reference letters fail to reflect that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Furthermore, the petitioner failed to submit any documentary evidence, for example, to demonstrate that the petitioner's roles were leading or critical when compared to the other researchers. Again, the AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's roles were leading or critical. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724

F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. The lack of supporting evidence gives the AAO no basis to gauge the significance of the roles performed by the petitioner. In addition, the petitioner failed to submit any documentary evidence establishing that Tsinghua University, the Department of Surgery at the University of Southern California, or the Department of Orthopaedic Surgery at the University of California, Los Angeles has a distinguished reputation.

Again, 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." The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

III. 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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[3] Rather, the proper conclusion is that the

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[3] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office* that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established 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.