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

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: DEC 1 8 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with an additional finding of fraud.

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

On May 22, 2012, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner that the approval of the petition was precluded pursuant to the marriage fraud provisions of section 204(c) of the Act.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

> Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204.2(a)(1)(ii) states:

> *Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Specifically, the petitioner married [redacted] on November 23, 2004, in San Diego, California. [redacted] filed Form I-130, Petition for Alien Relative, seeking to classify the petitioner as the spouse of a United States citizen pursuant to section 201(b) of the Act. Although a marriage may be given legal effect in the United States or abroad, the USCIS is not required to recognize it for the purpose of conferring immigration benefits where the marriage was entered into for the purpose of evading the immigration laws. *Matter of M-*, 8 I&N Dec. 217 (BIA 1958); *Lutwak v. United States*, 344 U.S. 604 (1953); *Johl v. United States*, 370 F.2d 174 (1966). The central question in spousal visa petition proceedings is the intent of the parties at the

time the marriage is entered into. *Bark v. INS*, 511, F.2d 1200 (9th Cir. 1975); *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980).

As indicated in the AAO's notice, the record of proceeding contained substantial and probative evidence reflecting that the petitioner's marriage to [redacted] was a blatant attempt to circumvent the immigration laws. In fact, when [redacted] was confronted with the derogatory information, including the inconsistencies in the sworn testimonies, [redacted] withdrew his petition. A decision regarding section 204(c) of the Act is for USCIS to make in prior collateral proceedings. The United States Citizenship and Immigration Service (USCIS) should reach its own independent conclusion based the evidence actually before it. *Matter of Rahmati*, 16 I&N Dec. 538 (BIA 1978); *Matter of F-*, 9 I&N Dec. 684 (BIA 1972). A finding that section 204(c) of the Act does apply to an alien must be based on evidence that is substantial and probative. *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990); *Matter of Agdianoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972). Once USCIS has met this initial requirement, the burden shifts back to the petitioner, as part of his burden of proof in visa petition or revocation proceedings, to rebut the Government's evidence and establish that the prior marriage was bona fide and that section 204(c) of the Act should not apply. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988).

Pursuant to the regulations at 8 C.F.R. §§ 103.2(b)(16)(i), the petitioner was afforded 30 days in which to respond to the AAO's notice. On June 28, 2012, the AAO received a letter from counsel stating:

> As I was not the attorney who represented [the petitioner] and her husband in the marriage case, I have filed a request pursuant to FOIA [Freedom of Information Act], to be provided with every document in her marriage/adjustment file. I need the information contained in her file in order to provide [the petitioner] with proper legal representation.
>
> In view of the foregoing, it is respectfully requested that the AAO grant us an additional thirty (30) days to respond to its letter dated May 22, 2012, that period to begin upon our receipt of the response to the FOIA request.

A review of the record of proceeding reflects that counsel's FOIA request was processed on September 21, 2012. However, as of the date of this decision, the petitioner failed to respond to the AAO's notice. The regulation at 8 C.F.R. § 103.2(b)(13)(i) states that [i]f the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons."

The AAO notes that the petitioner's failure to submit independent and objective evidence to overcome the derogatory information seriously compromises the credibility of the petitioner and the documentation submitted in support of her employment-based petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner

submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Regardless, the AAO will address the director's finding that the petitioner has failed to demonstrate that she meets at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. 8 C.F.R. § 204.5(h)(3). 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 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.

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]

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

The director determined that the petitioner failed to establish eligibility for this criterion. Specifically, the director found that "[n]o evidence was submitted corroborating the alien petitioner's individual role/recognition within the context of what appear to be collaborative group endeavors for which the awards were granted." In other words, the director determined that the evidence recognizing the companies in which the petitioner was employed was not

[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).

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

tantamount to the *petitioner's* receipt of nationally or internationally recognized prizes or awards for excellence in the field.

On appeal, prior counsel claims:[3]

> The awards of significant service recognition were presented to [redacted] [the petitioner's father] representing as [redacted]
>
> Company for national and international service contributions to Turkey as a "COMPANY". [sic] Hence the awards are primarily designed to recognize and sanction the company's total record of performance rather than an individual. [The petitioner] definitely has a fair claim in sharing the awards with her family group who own both group of companies: [redacted]

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A letter addressed to [redacted] from the Ministry of Turkey, Republic of Turkey who indicated that the company received the "Roll of Honor" for its 69th ranking in the national tax payments ranking classification for fiscal year 1997;

2. A document from [redacted] who indicated that [redacted] ranked 21st in the total nationwide tax payment ranking classification;

3. An article from *Capital Magazine*, dated October 1999, indicating that "[b]ased on the ranking classification of the largest dam construction contracting companies with completions contract operation between the years 1994 – 1998, [redacted] ranked 3rd";

4. A letter, dated October 8, 1991, addressed to [redacted] from [redacted] of State, who congratulated [redacted] "upon [his] meritorious performance as a young and dynamic member of our society";

5. A letter, dated December 30, 1994, that was unaddressed from [redacted] who indicated that he was "impressed with your honorable record of service contribution to the economic well being of our land and people"; and

[3] Prior counsel was [redacted]

6. A letter, dated March 15, 2007, addressed to the petitioner from [redacted] who thanked the petitioner for her "outstanding efforts in connection with execution of [redacted]s national and international contracts."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the *alien's* receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor [emphasis added]." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that her prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

Regarding items 1 – 5, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt" of prizes or awards, the submission of documents and letters that are addressed to either [redacted] or his group of companies is insufficient to demonstrate that the petitioner received any nationally or internationally recognized prizes or awards for excellence in the field. Further, the AAO cannot conclude that a prize or award that was not specifically presented to the petitioner is tantamount to her receipt of a nationally or internationally recognized award. It cannot suffice that the petitioner was one member of a large group that earned collective recognition. Regardless, the documentary evidence submitted by the petitioner fails to reflect a prize or award, let alone a nationally or internationally recognized prize or award for excellence in the field. There is no evidence indicating that the receipt of a tax ranking, for example, is equivalent to a prize or an award.

Regarding item 6, the petition was filed on October 23, 2006; however the letter is dated on March 15, 2007. Eligibility must be established at the time of filing. Therefore, the AAO will not consider this item as evidence to establish the petitioner's eligibility. 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. Nonetheless, the petitioner failed to establish that a letter thanking the petitioner for her contributions is tantamount to a prize or award. Moreover, the petitioner failed to demonstrate that the appreciation letter is recognized beyond the Eren Group of Companies, so as to reflect a nationally or internationally recognized prize or award for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner demonstrate her receipt of nationally or internationally recognized prizes or awards for excellence in her field. In this case, the petitioner failed to demonstrate that she has received any prizes or awards, let alone nationally or internationally recognized prizes or awards for excellence in the field.

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

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 the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. Specifically, the director found that "[n]o evidence was submitted corroborating the alien petitioner's individual role/recognition within the context of what appear[s] to be collaborative group endeavors for which the memberships were granted." In other words, the director determined that the memberships of the companies in which the petitioner was employed was not tantamount to the *petitioner's* memberships in associations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the *alien's* membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields [emphasis added]." 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.

A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on her purported membership with the following associations:

1. The Turkish Contractors Association (TCA);
2. The Turkish Employers' Association of Construction Industry (INTES);
3. [redacted] and
4. The Turkish Industrialists and Businessmen Association (TUSIAD).

Regarding item 1, the petitioner submitted a letter from [redacted], who stated that [redacted] comprising the main contracting *companies* of Turkey, is the oldest and the most prominent organization of Turkey in the construction sector [emphasis added]." Moreover, [redacted] stated that "[o]nly *companies* bearing specific technical, legal[,] financial and work experience related criteria can become members of the TCA [emphasis added]." Furthermore, [redacted] stated that "the company" has to fulfill at least one condition to meet the work experience criterion. In addition, the petitioner submitted screenshots from www.tmb.org.tr reflecting *companies* who are members of TCA.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the *alien's membership* in associations [emphasis added]." Similar to the reasons discussed under the awards criterion above, the petitioner must demonstrate that she is a member of associations rather than demonstrating that her employers are members of associations. As there is no indication that membership with TCA is granted to individuals but to companies, the petitioner failed to establish that she is a member of TCA. Although on appeal the petitioner submitted a letter from [redacted], Secretary General of TCA, who indicated that the petitioner has made significant contributions to the international relations to her company and TCA, the fact remains that the petitioner is not a member of TCA. In fact, [redacted] are members of TCA. It cannot suffice that an employer's membership with an association also demonstrates an employee's membership with an association.

Likewise, regarding item 2, the petitioner submitted documentary evidence reflecting that [redacted] Company is a member of INTES. The petitioner failed to submit any documentary evidence establishing that an individual is eligible for membership with INTES. In fact, the petitioner submitted screenshots from INTES' website that exclusively listed companies as members of INTES. Without evidence of the petitioner's actual membership with INTES, the petitioner cannot meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Similarly, regarding item 3, the petitioner submitted a certificate indicating that NTF Company is a member of the [redacted]. While the document listed the petitioner as one of the shareholders of the company, the fact remains that NTF Company is a member of the [redacted] rather than the petitioner. Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires the "alien's membership" rather than an employer's membership.

Regarding item 4, the petitioner submitted a certificate indicating that the petitioner has been a member of TUSIAD since October 27, 2000. The petitioner also submitted screenshots from TUSIAD's website that reflected the mission and background of TUSIAD. In addition, the petitioner submitted screenshots from www.turkishdailynews.com reflecting articles about TUSIAD.

While the documentary evidence submitted by the petitioner reflects that she is a member, the petitioner failed to demonstrate that membership with TUSIAD requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Although the screenshot provides general background information about TUSIAD, the screenshots submitted by the petitioner fail to provide any membership requirements, so as to establish that they reflect outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

Moreover, even if the petitioner were to establish that her membership with TUSIAD meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in more than one association.

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*, 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). In the case here, the petitioner has only demonstrated her membership with one association.

As discussed, the petitioner cannot meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) by simply submitting documentary evidence reflecting the memberships of her employer. It is the petitioner's burden to establish eligibility for every element of this criterion. In this case, the petitioner failed to establish that she is a member of any association that requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

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

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

The director determined that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), prior counsel claimed the petitioner's eligibility for this criterion. Specifically, prior counsel claimed:

> Exercising a high level of supervision over a workforce of thousands of engineers, technicians, managers, etc., the petitioner has judged the work of others in their respective field of endeavor.
>
> [The petitioner] represents her group of companies and her country in the world of Construction Industry. She makes all INTERNATIONAL BUSINESS ECONOMIC DECISIONS for her company's international contracts.

In support of prior counsel's claim, he referred to contracts of [redacted] and [redacted] It is noted that even though prior counsel claimed he submitted documentation regarding the last project, a review of the record of proceeding fails to reflect that prior counsel submitted the

documentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified under the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Simply signing a contract on behalf of the petitioner's company is insufficient to demonstrate that she participated as a judge of the work of others. There is no indication as to what work or individuals the petitioner judged. While the petitioner's role in signing contracts has evidentiary value for the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and discussed later, it does not meet the plain language of this criterion.

For the reasons discussed above, the petitioner failed to demonstrate that she participated as a judge of the work of others in the same or an allied field of specification for which classification is sought at the time of the filing of the petition consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. On appeal, prior counsel claims the petitioner's eligibility for this criterion based on her creation of [redacted] and publication of a book entitled *Management Systems Control.*

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 business-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Regarding AS, at the initial filing of the petition, prior counsel claimed:

> This concept [h]as yet remains to be adopted by [redacted]

> installation of [AS] has allowed the management of [redacted] to monitor devices enabling her to centralize all operations through a cable networking system – an extremely successful innovation that placed the petitioner among the world's best leaders of construction companies. . . . The [redacted] EUROPE that has introduced this system.

Moreover, the petitioner submitted a letter from [redacted] of [redacted] who stated that "[b]y bringing broad assets of her scientific findings specifically "[AS]", and demonstrating a capacity for unique executive leadership, [the petitioner] *will* have a significant impact on industrial development of the United States of America [emphasis added]." Further, the petitioner submitted a "Brand Registration Certificate" from the Turkish Patent Institute reflecting that it was registered for ten years.

Based on prior counsel's own claim, AS has been only applied at the [redacted]. There is no evidence reflecting the application of the system throughout the petitioner's field, so as to demonstrate an original contribution of major significance in the field. The impact or influence of AS has been limited to the petitioner's own company that is not reflective of having a major significance in the field. Furthermore, the AAO 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. Moreover, [redacted] speculated that the AS "will have a significant impact." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. There is no indication that any construction company is currently applying AS beyond her own company, so as to establish that it has already impacted the field in a significant manner. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The assertion that AS will likely to be influential is not adequate to establish that AS is already recognized as a major contribution in the field.

Regarding NTFIS, the petitioner submitted a letter from Firat Eren who stated:

> [The petitioner] has contributed a lot to our company as an executive and developer; who customized the [redacted] an integrated software, designed to overcome the difficulties in controlling NTF work sites which are spread over different geographical regions.

[redacted] did not indicate the impact or influence of [redacted] beyond [redacted], so as to reflect an original contribution of major significance in the field. Again, while [redacted] may be

utilized by the petitioner's company, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contribution be of major significance in the field. Without evidence showing the significance of the petitioner's work in the field as a whole, simply submitting evidence of the petitioner's work at her company is insufficient to meet this criterion.

Regarding *Management Systems Control*, a review of the book submitted by the petitioner credits the petitioner as the "coordinator of design and publication." Furthermore, in the preface of the book, [redacted] indicates that the petitioner developed and implemented the applications of the management systems at [redacted] However, the petitioner failed to submit any documentation to demonstrate that the book is considered an original contribution of major significance in the field. Once again, there is no evidence to establish that the *Management Systems Control* has been widely applied or implemented in the field, so as to demonstrate that is has been of major significance in the field as a whole rather than limited to [redacted]

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 her field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

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

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

The director determined that the petitioner established 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." Based on a review of the record of proceeding, the petitioner submitted sufficient documentary evidence to demonstrate that she minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner established that she meets this criterion.

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

In the director's decision, he determined that the petitioner established eligibility for this criterion. However, based on a review of the record of proceeding, the AAO must withdraw the decision of the director for this criterion.

The petitioner submitted the following documentation:

1. A letter, dated September 25, 2006, from [redacted] stating that the petitioner "commands an annual salary including benefits of $576,000 outmatching the compensation received by her associates of equal distinction";

2. A letter, dated September 22, 2006, from [redacted] who stated that the petitioner "receives an annual salary and benefits af [sic] US$ 576,000.00 paid to her in three installments at the end of each quarter;

3. A non-certified and partial translation of a document from www.cnnturk.com.tr claiming the salary compensation for a police officer, medical doctor, university professor, member of parliament, prime minister, and cabinet ministers;

4. A non-certified and partial translation of a document from Capital Magazine claiming that "CEO's of private corporations receive highest rates in monthly compensation" and "these rates range between 120 to 200 thousand dollars in monthly compensation – a figure represented by a total of 2,400,000.00 dollars per annum";

5. A screenshot from Sabah Newspaper indicating that "[t]he average executive yearly salary in Turkey is 79,000 Euros";

6. A screenshot from www.forbes.com listing the top ten highest-paid CEOs in 2005; and

7. A screenshot from www.wsws.org that named several CEOs and their salaries in 2005 such as [redacted] (Citibank) who earned $280 million in total compensation, [redacted] who earned $164 million, and [redacted] who earned $133 million.

The petitioner failed to submit primary evidence of her salary such as payroll records, paystubs, or income tax documentation. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, while the petitioner submitted two job letters from her own company and father, the petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, the letters from [redacted] and [redacted] are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they

contain the requisite statement, permitted by Federal law, that the signer, in signing the statement, certify the truth of the statement, under penalty of perjury. 28 U.S.C. § 1746. As the petitioner failed to comply with the regulation at 8 C.F.R. 103.2(b)(2)(i), she failed to demonstrate her commanded salary at the Eren Group of Companies.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that the petitioner commands a high salary "in relation to others in the field." According to [redacted], the petitioner has served as a general manager, CEO, president, and treasurer of the family construction business. However, regarding items 3 – 7, the petitioner failed to submit any documentary evidence comparing her salary to other general managers, CEO's, presidents, and/or treasurers in her field. It is noted that regarding items 3 and 4, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a full and certified English language translation. Because the petitioner failed to submit full and certified English language translations as required pursuant to the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Nevertheless, the petitioner's reliance on the salaries of various occupations such as police officers is insufficient to compare her salary "in relation to others in the field," as well as comparing the salaries of CEOs over a broad range of fields. Similarly, the submission of documentary evidence reflecting the average salary for a general executive salary in Turkey is too narrow to demonstrate the petitioner's high salary compared to others in the petitioner's specific field. Even if the AAO was to compare the petitioner's salary to the salary of the CEO at Citibank, the petitioner's purported yearly salary of $576,000 is significantly smaller than Richard Fairbank's salary of $280 million in 2005.

The evidence submitted by the petitioner does not establish that she has commanded a high salary in relation to experienced professionals in her occupation. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

For the reasons discussed above, the petitioner failed to submit sufficient documentary evidence evidencing her commanded salary and demonstrating that her salary was high when compared to others in her field. As such, the AAO withdraws the decision of the director for this criterion.

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.

FURTHER ORDER: The AAO finds that the petitioner entered into a fraudulent marriage and pursuant to section 204(c) the approval of the petitioner's visa petition is prohibited.

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[4] 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).