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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: MAR 12 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 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit children's hospital. It seeks to classify the beneficiary 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 in the sciences. The director determined the petitioner had not established that the beneficiary has 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 for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that the petitioner submitted comparable evidence of the beneficiary's extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). 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.* 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.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 31, 2009, seeks to classify the beneficiary as an alien with extraordinary ability as a Pediatric Neurologist. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[2]

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

The petitioner submitted an October 31, 2000 "Certificate of Merit" from the "Lagos Mainland Local Govt. Committee" of the National Youth Service Corps stating: "This certificate is awarded to [the beneficiary] . . . by The Chairman, Lagos Mainland Local Government in recognition of his/her Outstanding contributions to the growth of Local Government Area during the 1998/99 Service Year."

The petitioner also submitted a July 14, 2009 letter from [redacted] Children's Hospital, stating:

> [The beneficiary] has received national or international awards including:
>
> - Certificate of merit awarded by the Chairman, Lagos Mainland Local Government, Nigeria, in recognition of outstanding contributions to the growth of the Local Government area during the 1998-1999 Service Year;
> - Leader for the Medical group, National Youth Service Corps, Lagos Mainland Local Government Nigeria from 1998-1999;
> - Editor-in-chief, yearbook committee of the 1997 graduation class, University of Lagos College of Medicine, Nigeria; and
> - Best Student in Basic Therapeutic Skills for 1992 from the University of Lagos College of Medicine.

The Certificate of Merit from the Chairman, Lagos Mainland Local Government, reflects a regional honor for service to the local government in Lagos rather than a nationally or internationally recognized prize or award for excellence in the beneficiary's field of pediatric neurology. Regarding [redacted]' assertions that the beneficiary was "Leader for the Medical group, National Youth Service Corps, Lagos Mainland Local Government Nigeria from 1998-1999;" "Editor-in-chief, yearbook committee of the 1997 graduation class, University of Lagos College of Medicine, Nigeria;" and "Best Student in Basic Therapeutic Skills for 1992 from the University of Lagos College of Medicine," the record does not include documentary evidence to support [redacted]' claims. Rather than submitting primary evidence of the beneficiary's Medical Group leadership position, his position as Editor-in-chief of his school yearbook, and his

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

"Best Student" designation, the petitioner instead submitted a third-party letter from [redacted] attesting to their existence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The July 14, 2009 letter from [redacted] does not comply with the preceding regulatory requirements.

Regardless, there is no documentary evidence showing that the beneficiary's student and youth honors are nationally or internationally recognized prizes or awards for excellence in the field of pediatric neurology. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

Moreover, the record does not include evidence of the national or international *recognition* of the beneficiary's particular awards, such as national or widespread local coverage of his awards in professional publications or the general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the awards received by the beneficiary were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

Furthermore, even if the petitioner were to establish that the beneficiary's "Certificate of Merit" from the "Lagos Mainland Local Govt. Committee" meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the beneficiary's receipt of qualifying "prizes or awards" 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*, 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). Therefore, the beneficiary's receipt of a single nationally recognized award does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In light of above, the petitioner has not established that the beneficiary meets this regulatory 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 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 an October 24, 2006 certificate indicating that the beneficiary "is certified as a Diplomate of the American Board of Pediatrics for the period 2006 – 2013." The petitioner also submitted a July 14, 2009 letter from [redacted] stating that the beneficiary is a member of the American Academy of Neurology, the American Academy of Pediatrics, and the American College of Sports Medicine, but there is no documentary evidence to support his assertion. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The July 14, 2009 letter from [redacted] does not comply with the preceding regulatory requirements. Regardless, there is no documentary evidence of the membership requirements (such as bylaws or rules of admission) for the American Board of Pediatrics, the American Academy of Neurology, the American Academy of

Pediatrics, and the American College of Sports Medicine showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field.

In light of above, the petitioner has not established that the beneficiary meets this regulatory 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 submitted copies of two scholarly articles coauthored by the beneficiary in *Indian Journal of Pediatrics* and *Clinical Pediatrics*, and a letter of support from [redacted] listing the preceding articles. The petitioner has documented the beneficiary's authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that the beneficiary meets this regulatory 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 AAO withdraws the director's finding that the beneficiary meets this regulatory criterion. The petitioner submitted a July 18, 2008 letter from the Vice President of Operations at the [redacted] Children's Hospital offering the beneficiary a yearly salary of $202,800. The record, however, does not include documentary evidence (such as payroll records or income tax forms) showing the beneficiary's actual earnings for any specific time period. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner to submit evidence demonstrating that the beneficiary "has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field.*" [Emphasis added.] The petitioner offers no basis for comparison showing that the beneficiary's salary was high in relation to that of other pediatric neurologists. The record is void of information regarding salaries for physicians who perform similar work. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering 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 evidence submitted by the petitioner does not establish that the beneficiary has received a high salary or other significantly high remuneration for services in relation to others in the field as of the petition's filing date. Accordingly, the petitioner has not established that the beneficiary meets this regulatory criterion.

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate the beneficiary's 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).

B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel asserts that the July 14, 2009 letter from [redacted] is comparable evidence of the beneficiary's extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addresses four of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Counsel does not explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the preceding letter from Dr. DeRoos is "comparable" to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

Regardless, much of the content of [redacted]' letter has already been considered under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), and (vi). [redacted] letter further states:

> I have been involved from the beginning of the hospital's recruiting efforts to obtain [the beneficiary's] services and strongly endorse the grant of U.S. permanent resident status for him.
>
> * * *
>
> I emphasize that [the beneficiary] will be providing specialized pediatric neurology care for infants and children, including the treatment of seizure disorders, neuromuscular disease, and movement disorders. Performing these highly specialized medical services requires a medical degree, plus prior related experience and training in the field of pediatric neurology through a combination of residency and fellowship. [The beneficiary] has obtained such experience and training with special qualification in child neurology.
>
> Following receipt of his medical degree from the College of Medicine, University of Lagos, Lagos State, Nigeria, [the beneficiary's] training had included:

- Pediatric Residency from July 2003 to June 2006 at Michigan State University, Kalamazoo Center for Medical Studies; and
- Child Neurology fellowship from July 2006 to July 2009 at the University of Washington, Seattle, Washington.

* * *

> [The beneficiary] is an alien of extraordinary ability and an individual who will make a valuable contribution to a critical healthcare need for U.S. children and their families.

Assuming the beneficiary's skills, training qualifications, and experience 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 qualified and to have others attest to those talents. The petitioner must submit documentary evidence of the beneficiary's "sustained national or international acclaim" and "extensive documentation" showing that his achievements have been recognized in the field. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The statutory requirement that the beneficiary have achieved "sustained national or international acclaim" necessitates evidence of recognition beyond his employer.

While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from references selected by the petitioner.

The opinion of [redacted] is not without weight and has 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 beneficiary'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 a pediatric neurologist who has sustained national or international acclaim.

C. 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 the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), and (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted evidence does not rise to the level of nationally or internationally recognized prizes or awards for excellence in the field. The AAO notes that the majority of the beneficiary's honors were limited to students. Thus, they cannot establish that he is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 953, 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that the beneficiary's receipt of student and youth awards which exclude veteran physicians in the field from consideration should necessarily qualify him for approval of an extraordinary ability employment-based immigrant visa petition. While the AAO acknowledges that a district court's decision is not binding precedent, the AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

Although the present case arose within the jurisdiction of another federal judicial district, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." Moreover, there is no evidence showing that the beneficiary has received any prizes or awards subsequent to 2000. The statute and regulations require the petitioner to demonstrate that the beneficiary's national or international acclaim has been *sustained. See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i),

and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim in pediatric neurology as of the July 31, 2009 filing date of the petition.

Regarding 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 beneficiary's associations require outstanding achievements of their members, as judged by recognized national or international experts in his field. The petitioner has not established that the beneficiary's memberships are 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.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi), the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. In response to the director's request for evidence, the petitioner submitted citation results from Google Scholar indicating that the beneficiary's article in *Indian Journal of Pediatrics* has been only moderately cited (14 times). The petitioner also submitted copies of eight articles citing to the beneficiary's work. This moderate level of citation is not sufficient to demonstrate that the beneficiary's articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field. Further, there is no evidence showing that the beneficiary has published any scholarly articles subsequent to 2005. The statute and regulations require the petitioner to demonstrate that the beneficiary's national or international acclaim has been *sustained. See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi) is not commensurate with *sustained* national or international acclaim as of the July 31, 2009 filing date of the petition.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), there evidence showing that the beneficiary has received a high salary or other significantly high remuneration for services in relation to others in the field or that his level of compensation places him among that small percentage who have risen to the very top of the field. The documentation submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the beneficiary is one of that small percentage who have risen to the very top of his field.

In this matter, the petitioner has not established that the beneficiary's achievements at the time of filing were commensurate with sustained national or international acclaim as a pediatric neurologist, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary for him to qualify for

the classification sought, it appears that the very top of his field of endeavor is above the level the beneficiary has attained.

III. Conclusion

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.