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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: NOV 03 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

On appeal, counsel, on behalf of the petitioner, asserts that the director failed to carefully review the evidence and asserts that he erred in denying the visa petition. Specifically, counsel maintains that the petitioner met the requirements of submitting qualifying evidence under at least three of regulatory criteria. Considering the evidence in the aggregate, the petitioner has not established eligibility for the benefit sought by a preponderance of the evidence. While several reference letters in the record contain assertions that there is a shortage of Chinese language teachers, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998). The AAO will discuss the appropriate legal standard for the classification sought below.

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

[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).

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]

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

While the petitioner originally submitted evidence relating to this criterion with her Form I-140, the director found that she failed to satisfy the requirements of the regulation, and the petitioner does not challenge the finding on appeal. Consequently, the AAO concludes that the petitioner has abandoned her claim regarding this criterion. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005) citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

> *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.* 8 C.F.R. § 204.5(h)(3)(iv).

The director determined that the petitioner failed to satisfy the requirements of this criterion. On appeal, counsel, on behalf of the petitioner, suggests that the director failed to properly weigh the evidence relating to this criterion. Specifically, counsel states that the director, in making his ultimate decision about this criterion, improperly inferred that there was a small pool of qualifying teachers from which to select consultants and that he improperly drew a distinction between the term referee and consultant.

The petitioner initially submitted a letter from [redacted], Senior Vice President of the University of Massachusetts. The director in the Request for Evidence (RFE) indicated that the letter was not qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv), because acting as a judge of a high school students' speech contest was not judging the work of others in the petitioner's field of endeavor – teaching and researching or developing methodologies for teaching the Chinese language. The petitioner, however, failed to respond to the director's disqualification of this particular piece of evidence in her response to the RFE or on appeal. Therefore, the AAO finds that the petitioner abandoned this portion of her claim. *See Sepulveda,*, 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

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

On appeal, counsel references statements in a November 6, 2011 supporting letter written by [redacted] part of [redacted] writes:

> [The petitioner] was selected as a consultant for [redacted] based on her international vision, unique expertise, outstanding teaching and researching experience, and the great impact her research has on the field of teaching Chinese as the second language in the US. [The petitioner] was invited to review and provide suggestions for *Sunshine Chinese*, Series Three and Series Four, which are composed by distinguished US and Chinese scholars and educators. Her constructive insight on designing manuscripts based on integration of the US National Foreign Language Standards, (5Cs), State Level Foreign Language Curriculum, and the curriculum of other disciplines has been highly valued and well adopted.

In his letter, [redacted] outlines the qualifications that his organization requires for the selection of a reviewer or a consultant, which are identical. The AAO determines that peer reviewing manuscripts qualifies as judging. The petitioner, however, initially submitted documents related to her judging of a high school language competition as the only evidence under this criterion. In the petitioner's RFE response, as noted earlier, the petitioner declined to contest the director's findings that serving as a judge for that event failed to satisfy the requirements of this criterion. Instead, the petitioner submitted new evidence for the first time by including the November 6, 2011 letter from [redacted] that postdates the April 12, 2011 filing date by several months. [redacted] does not state that the petitioner performed the duties of a reviewer and/or consultant prior to April 12, 2011. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In light of the discussion above, the AAO affirms the director's findings and concludes that the petitioner failed to meet the requirements for this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The director found that the petitioner failed to satisfy the requirements set forth at 8 C.F.R. § 204.5(h)(3)(v). The plain language of the regulation requires both that the petitioner's contributions be original and of major significance in the field. The AAO must presume that the word "original" and the phrase "major significance" are not superfluous and, thus, that they have 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). Moreover, the contribution must be a contribution "in the field" rather than simply recognized within a single local jurisdiction. To be considered a contribution of major significance in the field of education, it can be expected that the

petitioner's methodology would have already been adopted or otherwise influential in multiple jurisdictions nationally. Otherwise, it is difficult to gauge the impact of the petitioner's work.

On appeal, counsel asserts that the petitioner is a "pioneer and first scholar" in her field whose research and methodology for teaching Chinese has had a great impact in the field.

As an initial matter, to dispute the director's finding that a key part of the petitioner's teaching strategy was not shown to be original or of a major significance, counsel maintains that Chinese is a strategically important language and demand for learning the language has dramatically increased and submits a new letter on appeal from [redacted]. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Moreover, whether or not Chinese is currently a strategically important language and is a language in high demand are not factors relevant to the petitioner's impact in the field. The regulatory language targets whether an alien has made contributions of major significance in the field, regardless of the perceived importance of a given field. *See* 8 C.F.R. § 204.5(h)(3)(5).

In her letter, [redacted] asserts generally that the petitioner has already had "a deep impact" on teaching Chinese but in support of that assertion writes:

> [The petitioner], as an extraordinary educator, has completed her manuscript about the above teaching methods. Her book will be published soon by the largest publishing house in China, the International Chinese Publishing Division, Center for International Chinese Research and Development, Foreign Language Teaching and Research Press.
>
> I believe that [the petitioner's] research will contribute to improved teaching and learning of Chinese in the US. [The petitioner's] unique expertise and her role in the field will set a good direction for creating customized Chinese teaching strategies and teaching materials for the students in the elementary and secondary students.

[redacted]'s specific comments regarding the petitioner's research discusses the future impact that the petitioners work will have in the field. In addition, because the evidence of the petitioner's research, as discussed in the letter, is limited to an as yet unpublished book, the AAO cannot gauge the impact of the petitioner's work. A petitioner must establish the elements for the approval of the petition at the time of filing. *See Matter of Katigbak*, 14 I&N at 49.

As for the other letters the petitioner submits to satisfy the requirements of this criterion, the AAO agrees with the director that the initial group of letters submitted along with the petitioner's I-140 petition, is insufficient to demonstrate original contributions of major significance in the field. The petitioner submitted letters from [redacted] and [redacted] Nancy [redacted] appear to be from the petitioner's immediate circle of colleagues in the Boston area where she teaches. While such letters can be important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's acclaim beyond

her immediate circle of colleagues. Furthermore, the letters either generally discuss the petitioner's educational approach or discuss projects that had an impact in the individual colleague's work, but do not specifically identify contributions that influenced the field. *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010) (finding letters that did not specifically identify contributions nor provide specific examples of how those contributions influenced the field to be insufficient as major contributions).

The petitioner submitted a letter dated March 19, 2011 from [redacted] along with the initial group of letters, and subsequently supplemented her documentary evidence by providing another letter, dated October 30, 2011, from another reference in response to the director's RFE. The AAO will consider both letters and will highlight some of the unique components in each letter. In his March 19, 2011 letter, [redacted] writes:

> Due to her pioneering research in teaching methodology, [the petitioner] was invited by the American Council of Teaching the Foreign Languages Annual (ACTFL) Conference in Boston, 2010 to deliver a presentation. ACTFL is the highest level organization for foreign language teaching with a great international reputation across more than 30 countries. Being selected by ACTFL is regarded as the highest recognition for educators. At ACTFL, [the petitioner's] presentation was highly regarded and attracted educators and attracted educators and visiting scholars from more than a dozen countries.

The letter states that she was invited to the 2010 ACTFL conference on the strength of her research. The record, however, is devoid of the petitioner's actual research and resulting methodology. The record includes the Daily Program from the conference, which shows the petitioner's presentation with the title, "Chinese Cultural Instruction Through Multimedia Documentaries." While the program annotation and the supplemental slideshow broadly suggest that culture is a part of a language curriculum, there is no evidence of the petitioner's original research or that the petitioner presented original research as part of the conference. Moreover, selection to present work is indicative of the organizers' belief in the potential of the presentation to be of interest in the field. The record contains no evidence, however, documenting the application of the petitioner's presentation once disseminated in the field at the conference. Thus, the petitioner's mere participation in the 2010 ACTFL conference does not qualify as evidence of original contributions of major significance in the field.

[redacted] in a letter along with a letter written by [redacted] and Culture at Beijing Normal University, and the October 30, 2011 letters from [redacted] and [redacted] discuss that the petitioner's teaching methodology uses the "5Cs" of the National Foreign Language Standard as guidelines and integrates state foreign language curriculum with various subjects.

The Five National Foreign Language Teaching Standards (communication, comparison, connection, culture, and community) and the state foreign language curriculum are pre-existing standards, and, as the director noted in the denial, while they are a part of the petitioner's teaching strategy, the petitioner

has not demonstrated that she developed it. Merely using these pre-existing standards do not qualify as an original contribution. While a new process of integrating the various standards may constitute an original contribution, the petitioner has failed to include evidence that demonstrate how she integrates the existing standards into various subject matters in an original way and the influence of that integration in the field as a whole. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm'r 1998).

[redacted] at the Foreign Language and Teaching Press, states that his company is "in the process of publishing the [petitioner's] book" and believes that "[the petitioner's] research and her book will be the definitive guide to Chinese teaching, and will help the US students achieve higher academic success in language learning." Until actual publication and dissemination in the field, the AAO cannot gauge the book's influence. Thus, the AAO reiterates that the petitioner's pending book cannot qualify as evidence of an original contribution of major significance at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. at 49.

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petitioner, which could have bolstered the weight of the reference letters.

Consequently, the AAO must determine that the petitioner failed to satisfy the requirements of this criterion and affirm the director's findings.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director determined that the petitioner's evidence failed to qualify pursuant to the requirements of 8 C.F.R. § 204.5(h)(3)(vi). On appeal, counsel asserts that [redacted] journal. The record reflects that there are several lesson plans that are included in a publication which reflects, on its face, in English the title [redacted], attests in a letter that "[The petitioner] published her papers on [redacted] an academic Journal of teaching Chinese as a second language. She has been using her penname as . . . from September 2009 to June 2010.

As an initial matter, the petitioner has failed to establish that [redacted] same publication. And while the editor of [redacted] states that it is an academic journal, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009). Furthermore, the materials in [redacted] appear to be individual language lessons instead of scholarly articles. In the appeal brief, counsel, on behalf of the petitioner, asserts solely that [redacted] is an academic journal or a professional publication, but does not maintain that the petitioner's work constitutes *scholarly articles*.

For all of the reasons discussed, the AAO must conclude that the petitioner failed to meet the requirements of the regulation relating to this criterion and affirm the director.

B. Summary

The petitioner has failed to submit relevant, probative and credible evidence that qualifies under any of the regulatory subparagraphs.

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.

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

[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).

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.