(b)(6)

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

DATE: FEB 2 5 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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 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 the sciences, 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 asserts that the director failed to evaluate the submitted evidence and render a decision with respect to the criterion for serving in a leading or critical role for organizations with a distinguished reputation. Counsel further asserts that the director did not consider all the evidence of record and erroneously determined that the petitioner did not establish that he had made original contributions of major significance in his field of endeavor. Finally, counsel maintains that the petitioner sufficiently submitted documentation to meet the regulatory criterion for membership in associations in the field that require outstanding achievements of their members. Counsel submits an appeal brief and mostly previously submitted evidence on appeal.[1]

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

[1] Counsel submits two new items on appeal; two affidavits from staff members from her law firm who attest to the preparation and submission of a cover letter and a citation list before the director.

> international acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (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.[2] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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

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

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[3]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The petitioner initially submitted evidence relating to this criterion. The director, after reviewing the evidence, concluded that the petitioner failed to satisfy the regulatory requirements and the petitioner does not identify any factual or legal error in this conclusion on appeal. Consequently, the AAO concludes that the petitioner abandoned this claim. *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–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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. 8 C.F.R. § 204.5(h)(3)(ii).

A petitioner must demonstrate that he meets all the elements of the regulation to meet this criterion. The director determined that the petitioner in this instance failed to show that the associations in which he is a member requires outstanding achievements of their members and that the membership eligibility was not judged by recognized national or international experts in the field.

The petitioner submitted evidence showing that he is a member of the American Physiology Society (APS), in addition to the membership requirements, as outlined by the organization's bylaws and a statement from the Membership Services Assistant. According to the bylaws, for eligibility for membership in APS, a person must have "conducted and published meritorious original research in physiology," and the person must "presently engaged in physiological work." The letter from the Membership Services Assistant clarifies that "an applicant's bibliography is evaluated on the basis of publications in major refereed journals." Counsel asserts on appeal that the regulations do not require the bylaws for the organization to specifically include the language "outstanding achievements" to meet this criterion. While the bylaws need not specifically include the words "outstanding achievements," a mere review of an applicant's bibliography to determine whether an applicant conducted and published meritorious research is insufficient to indicate that outstanding achievement is a necessary condition for membership. Furthermore, the evidence of record indicates that a six-member membership committee

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

is responsible for making recommendation for membership. Nothing in the bylaws requires the appointed members to be recognized national or international experts in physiology. While counsel maintains on appeal that appointment to a membership committee of a national organization is sufficient to demonstrate recognized national or international expertise, USCIS will not presume such expertise on mere participation on a membership committee. Therefore, the petitioner's membership in APS does not meet the requirements for this criterion.

The petitioner also submitted evidence showing that he is a member of the American Association of Immunologists (AAI). The bylaws for AAI state that: "[a]ny qualified person engaged in the study of immunology and who supports the mission of AAI can be recommended for active membership by a member of the AAI." In a letter, the Membership Coordinator for the AAI further states that the membership requirements include:

- possessing an M.D., Ph.D. or equivalent degree;
- being an established scientist with substantial achievement in a related discipline; and
- being an author of one publication on an immunological topic in a reputable, English language, peer-reviewed journal.

The website materials on membership categories in AAI provide that membership is available to "those worldwide who have a strong interest in and have a substantial contribution to the field of immunology." Depending on how the association views the phrase, a substantial achievement does not necessarily rise to the level of an outstanding achievement. Rather, it is necessary to look to the other requirements, as outlined by the association's website and the bylaws to determine the proper context. The website indicates under "Qualifications" for regular membership that the applicant must have the requisite degree and "be an author on one publication in a reputable English-language, peer-reviewed journal." No additional evaluation as to the significance of the applicant's achievements beyond a degree and a publication is referenced. Such requirements are minimal and when taken together with the extremely broad bylaw definition on who could become a member, it is apparent that AAI's definition of substantial contribution does not rise to the level of "outstanding achievement" as contemplated by the regulation.

Furthermore, while counsel asserts that the Council governing AAI selects the Membership Committee from prestigious members who have already been determined to have made a substantial contribution to the field and therefore, such members are recognized national or international experts, the record does not support such a claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAI's bylaws, Article VII, outlining the selection criteria for committee membership, including the Membership Committee provides:

SECTION 2. Membership of Committees.

A. Council, President, and Nominating Committee shall take into consideration the geographic location and the ethnic and multi-cultural diversity of the membership when making appointments or selecting nominees.
B. Only AAI members in good standing may be members of committees, and only active members may be chairs.

The selection criteria are primarily focused on geographic location and the ethnic and multicultural make-up of the membership committee. Such a focus does not not reflect that national or international experts in immunology judge membership candidates for active membership as required under 8 C.F.R. § 204.5(h)(3)(ii). In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

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 satisfied the regulatory requirements for this criterion and the AAO affirms the director's decision in this regard.

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. USCIS 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).

On appeal, counsel maintains that the director failed to consider the petitioner's citations. While the petitioner documented a significant number of citations in the aggregate, he has not demonstrated that, as of the date of filing, any one of his articles had garnered frequent citation. Counsel further asserts on appeal that supporting letters indicate that other scientists in the field are making use of the petitioner's contributions in their own work. In addition, counsel states that physicians and medical researchers have affirmed that the petitioner's discoveries have impacted their clinical practice.

the Head of the Free Radical Metabolism Section at the] Head of the Immunology and Hyperthermia Section, Radiation Biology and Health Science Division of the and Chair, serve or served as heads in departments or laboratories of the various organizations where the petitioner works or worked as a scientist. Significantly, while

all three individuals who are current or former supervisors in the respective organizations are complimentary of the petitioner as a scientist, they do not specifically identify contributions of major significance in the field. compliments the petitioner's findings as being important and observes that the petitioner has published in multiple peer-reviewed journals; outlines the petitioner's duties in his laboratory and comments on the petitioner's publications and his novel ideas; and comments that for someone early in his career, the petitioner has a strong record of accomplishments, including publications in well-respected journals.

The next group of letters includes testimonials from the following individuals: Professor of Radiation Oncology, Free Radical and Radiation Program at the Professor and Chief, Section of Cardiology, Department of Medicine at the Professor and Vice-Chairman, Department of Graduate School of Public Health at the Chair Professor, Department of Medical Research at Chairman and Professor of Biophysics, Department of Biophysics, Professor and Chair, Department of Pathology, Microbiology and Immunology at the ; and Associate Member, the , and Director of the

The above group of letters share common characteristics. They all indicate that they do not know the petitioner directly but have followed his research in some way. The letters also identify the various areas of the petitioner's research, highlight some of the petitioner's publications, discuss some of the petitioner's awards, especially emphasizing the importance of the National Institutes of Health (NIH) Pathway to Independence Award (PI), and then conclude repeating the language of the statute or regulations. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submissions with the petition. Also, 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.). Instead testimonial letters must provide specific examples of how the results from the petitioner's work are being widely applied by others in the field or that they otherwise equate to original contributions of major significance in the field.

As for the comments regarding the petitioner's published work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.[4] To hold otherwise would render meaningless the statutory requirement

[4] Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence

for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Thus, there is no presumption that every published article or presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

As for the above letters' focus on the petitioner's awards, particularly on the PI award, the regulations also contain a separate criterion regarding lesser nationally or internationally recognized awards. 8 C.F.R. § 204.5(h)(3)(i). At the outset, the petitioner does not separately meet the criterion relating to awards and the AAO again will not presume that evidence relating to the awards criterion is presumptive evidence that the petitioner also meets this criterion. Furthermore, the awards mentioned by the authors of the letters are restricted. The Fellows Award for Research Excellence (FARE) is limited to those fellows who are conducting research within NIH and the restriction for fellows limit the award to scientists in that early stage of their career who are still in training.[5] While the NIH is a large research organization, comprised of multiple institutes of inquiry, it nonetheless is just one among many research institutions and organizations, both nationally and internationally, that offers post-doctoral fellowships. Similarly, the record reveals that the PI award also is restricted to postdoctoral trainees who propose research relevant to the mission of one or more of the participating NIH institutes and centers. The background information for the PI Award also indicates that 150 to 200 Awards were anticipated to be awarded in just the initial year of the award. Given the restrictions relating to both the FARE and PI awards, and the number of PI awards contemplated in just the initial year, they are not indicative of contributions of major significance in the field.

The remaining testimonial letters submitted in support of this criterion are from individuals who have had a direct relationship with the petitioner. Professor of Medicine and Chief of the Division of Gastroenterology at writes a letter support. However, this letter shares the same characteristics identified in the above group of letters and includes some of the same deficiencies outlined above. Furthermore, while summarily states that "[the petitioner's] work has resulted and will continue to result in a greater understanding of how [obesity related] diseases progress and point to new options," her letter does not provide any specific examples of how the petitioner's discoveries have impacted her clinical practice, as alleged in counsel's appeal brief. Rather, she asserts generally that her collaboration with the petitioner is enhancing her team's knowledge of oxidative stress and teaching the team how to interrogate the roles of reactive oxygen species in cellular processes.

Chief of the Laboratory of Toxicology and Pharmacology at submitted a letter that largely focuses on the petitioner's productivity as a fellow and his awards. As stated above,

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that they were of "*major* significance." *Kazarian v. USCIS*, 580 F.3d at 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

[5] The NIH defines fellowship as "[a]n NIH training program award where the NIH specifies the individual receiving the award." http://grants.nih.gov/grants/glossary.htm#F, accessed on February 14, 2013.

distinction as a fellow, including awards, is insufficient evidence of contributions of major significance in the field.

Professor of Chemistry, Department of Natural Sciences at submitted a letter that provides the most detail on how the petitioner's work is applied by others. writes very specifically regarding the petitioner's

> [The petitioner] has developed the technique of for use in detecting the presence of I have used it in my own research and it has resulted in breakthroughs in my own work. It continues to be applied to the research of other scientists and is extremely significant as it enables
>
> microscopy to detect, image, and localize protein free radicals . . . .

summarizes the petitioner's contributions into three areas:

> [The petitioner] has developed novel research techniques that have been applied throughout the field, he has established connections between various areas of research that have provided new directions for future research and revealed new information in established disciplines, and he has made basic scientific discoveries of great importance to obesity and environmental effects on health research.

As support for the above conclusion, details the application of the and how she is making use of them in her own research and work. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The applicability of the petitioner's work in laboratory does not, by itself , demonstrate the type of widespread use that would be expected of a contribution of major significance. While asserts that the petitioner's approach "is becoming a common laboratory technique," the petitioner does not support this assertion with letters from more independent sources or the actual citations themselves confirming the authors' use of the petitioner's approach.

In addition, Staff Scientist with the Free Radical Metabolism Group, Laboratory of Pharmacology at attests to the continued usage of the techniques in her laboratory. The application of the petitioner's techniques in a laboratory of the institute where the petitioner works is not evidence of a wider impact in the field.

Professor of Molecular Genetics, School of Chemistry, Biochemistry & Pharmacology at the , also observes that the petitioner "has played a critical role in extending the applications of a powerful technique, named Thus, there is support for observations about the petitioner's development of a novel application of a laboratory technique. However, the record only gives definitive indication that two laboratories are using the techniques and does not support broad claim that the techniques have been "applied throughout the field." Notably, the petitioner's article on this topic has not been widely cited, especially as of the date of filing.

Nonetheless, even accepting, *arguendo*, the novel applications of the) as an original contribution, the petitioner fails to satisfy the regulatory requirements for this criterion because the development of the novel techniques is a singular contribution. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of "contributions" in the plural, which 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. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. While counsel challenges this interpretation of the use of the plural on appeal, he does so based on vague language in the Adjudicator's Field Manual in a paragraph that concludes with the statutory standard (a final merits issue). Regardless, the observation that one piece of evidence could satisfy a criterion worded in the plural does not answer whether USCIS constructs the use of the plural as having meaning. For example, an awarding authority could attest to multiple awards in a single document.

For all the reasons discussed above, the AAO must conclude that the petitioner failed to establish with relevant and probative evidence that he meets this criterion and affirm the director's finding in this regard.

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 also determined in his decision that the petitioner met this regulatory criterion and the AAO affirms the director's determination relating to this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The petitioner submitted evidence in support of this criterion along with the Form I-140 petition and the accompanying statement. On appeal, counsel states that the director did not include a discussion of the evidence relating to this criterion in his decision. The AAO will now review the submitted evidence in support of this criterion. *See Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Counsel asserts on appeal that the petitioner has demonstrated his critical role within NIH and Counsel further maintains that the petitioner has engaged in highly productive research collaborations

with laboratories in other institutions, such as the

who worked in the same laboratory as the petitioner at writes: "His development of new methodologies, significant research discoveries, NIH grant, international awards, and collaboration with leading laboratories have all established [the petitioner's] critical role at discusses the petitioner's work in the laboratory, then mentions an internal grant and restricted awards to conclude that he performed a critical role at While the petitioner's work that references above and in other portions of her support letter attests to the role that the petitioner has in the Pharmacology laboratory, assessment about the petitioner's role at the at large is conclusory. 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).

Professor, Department of Environmental Sciences and Engineering, School of Public Health, at the also attests to the petitioner's critical role within the laboratory of the Free Radical Metabolism group at At the outset, while is familiar with the research in the above mentioned laboratory, he is not directly associated with the laboratory and therefore, may not be in the best position to elaborate on the petitioner's role. *See* 8 C.F.R. § 204.5(g)(1) (evidence of experience shall consist of letters from employers). However, even assuming, *arguendo*, that the petitioner served in a critical role in the Pharmacology laboratory of the Free Radical Metabolism Group, such a role does not translate to a critical role for the larger organization, the

While counsel asserts on appeal that the petitioner has had an impact on other organizations through his various collaborative work, the record does not support a finding that the petitioner has served in a critical role in those organizations. Furthermore, counsel maintains that the evidence in the record establishes that the petitioner has served in a critical role at NIH and and essentially presents them as distinct organizations. However, is one of 27 Research Institutes that comprise NIH, and is part of the collective organization known as NIH. As such, and NIH cannot be claimed as separate organizations. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for "*organizations* and *establishments* that have a distinguished reputation" (emphasis added) in the plural, which 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.[6]

[6] *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

Accordingly, the AAO concludes that the petitioner has failed to satisfy the plain meaning requirements of 8 C.F.R. § 204.5(h)(3)(viii).

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The petitioner initially submitted documentation relating to this criterion along with the Form I-140 petition. The director determined that the petitioner failed to meet this criterion. The petitioner did not raise a legal or factual challenge regarding this criterion on appeal and the AAO concludes that the petitioner abandoned this claim. *See Sepulveda,* 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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.[7] Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122.

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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).

[7] 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

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.

1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).