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

(b)(6)

DATE: FEB 27 2013 Office: TEXAS SERVICE CENTER

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen and reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his 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 under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (vi), and (viii). For the reasons discussed below, the AAO will uphold the director's decision.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria

This petition, filed on June 20, 2011, seeks to classify the petitioner as an alien with extraordinary ability as a crop researcher. The petitioner received his Ph.D. in Crop Science from [redacted] in 2009. From May 2009 to February 2011, the petitioner trained as a postdoctoral research associate at the [redacted] Since March 2011, the petitioner has been employed as a crop researcher for [redacted].

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

The 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 the following:

1. 2009 from the College of Agricultural Sciences and Natural Resources at
2. Department of Plant and Soil Sciences' (2008);
3. Department of Plant and Soil Sciences' 007);
4. Department of Plant and Soil Sciences' (2008);
5. Certificate from the Postgraduate College, Mexico recognizing the petitioner "for his outstanding academic achievements which are fundamental to the development of this institution" as a "Research Associate" (2004);
6. "Academic Recognition" certificate from the Postgraduate College, honoring the petitioner "for his academic career, research and outstanding presentation of his [master's] degree examination in the Botany Program of the (2003);
7. "Academic Recognition" certificate from the Postgraduate College, congratulating the petitioner for his master's thesis (2003);
8. "Academic Recognition" certificate from the Postgraduate College, congratulating the petitioner "for grades obtained during his graduate studies in this institution" (2002);
9. "Distinguished Researcher" award "for the year 2000" from the Postgraduate College,
10. "Annual Award for outstanding work in education, research and service during 1992 … 3rd Place: Academic Category Research Assistant in the Botany Center" from the Postgraduate College,
11. A March 13, 2001 letter to the petitioner from the Deputy Director of stating: "I am pleased to inform you that as a result of its National Internet Call for Master Candidates I – January-February 2001, this Council has awarded you a scholarship . . . for the period beginning January 2001 through December 2002, in order for you to pursue your Master Degree studies at the Postgraduate College";

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

12. An April 2005 letter from [redacted] stating that the petitioner "has been awarded a 36-month scholarship to study at [redacted]" to "pursue a doctorate degree in Plant and Soil Science"; and
13. A July 2008 letter from [redacted] stating that the Council "has extended the term of the original scholarship by 8 months . . . so that [the petitioner] may continue his doctorate studies in Plant and Soil Science at [redacted]"

Items 1 – 10 reflect institutional recognition from the petitioner's alma maters rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Regarding items 1 – 13, the AAO notes that academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. 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, competition for university scholarships is limited to other students. Experienced researchers in the crop science field do not seek such student scholarships. The petitioner's scholarships represent financial support for his graduate studies at [redacted] and at the Postgraduate College in [redacted] rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. There is no documentary evidence demonstrating that the specific awards received by the petitioner were recognized beyond the presenting organizations or his alma maters and are therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

With regard to items 11 – 13, the petitioner submitted information from [redacted] website regarding its scholarship program stating:

WHAT IS IT?

[redacted]

* * *

HOW TO GET A SCHOLARSHIP FOR GRADUATE STUDIES ABROAD?

[redacted]

* * *

BASIC REQUIREMENTS

- Letter of acceptance from the institution where you want to do graduate studies.
- Application duly filled, additional forms and information required in the call concerned.
- Proof of academic degree or immediately preceding.
- Official transcript showing a minimum GPA of 8.0 or equivalent.
- Official document attesting to Mexican citizenship, photo ID and signature (Passport, Voter Registration Card) and CURP.
- Copies of certificates of language . . . .
- Candidates who are already doing graduate studies, further evidence must be submitted for registration for the period courses, if any, qualifications obtained at the time of submitting the application and a summary of his thesis project supported by the assessor.
- If you had a previous grant [redacted] shall deliver a copy of the "acknowledgement letter" issued by the [redacted] under the provisions of [redacted] fellowship, to formalize the grant.
- Information on the selected graduate program (date tentative start and end of the program, language that is taught, curriculum structure, required and optional materials that the applicant has chosen to pursue and information on research).
- In the case of doctoral studies, research proposal signed by the applicant, endorsed (signed) by a professor at the host institution, with the understanding that this professor will serve as the applicant's thesis advisor. . . .
- Three letters of recommendation, made exclusively by teachers or authorities linked to academic performance and/or aspiring professional . . . .
- The rest required by [redacted] under the terms and terms described in the call concerned.

As noted by the director, none of the "BASIC REQUIREMENTS" listed above indicate that "excellence in the field of endeavor" is a requirement for receiving a scholarship from the [redacted] rogram. Further, the self-serving nature of the information submitted from the [redacted] own website fails to demonstrate that the Council's scholarships are nationally or internationally recognized awards for excellence in the field of endeavor. USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Moreover, a scholarship funding program may be available to student applicants from throughout a particular country, but this factor alone is not adequate to establish that the petitioner's scholarships are "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The AAO again notes that competition for the petitioner's [redacted] scholarships was limited to other students. Experienced research scientists who have long since completed their graduate studies do not seek or compete for such scholarships. Despite the director's request for evidence, the petitioner failed to submit any supporting documentary evidence showing that his [redacted] scholarship grants are nationally or internationally recognized awards for excellence in the field of endeavor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that

the petitioner'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 instance, there is no documentary evidence demonstrating that the petitioner's specific scholarship grants were recognized beyond the Council or his universities and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that he 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.*

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

> *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.*

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted copies of numerous articles (including journal articles, book chapters, and dissertations) that cite to his work. Articles which cite to the petitioner's work are primarily about the authors' own work or recent trends in the field, and are not about the petitioner or even his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that briefly mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). It cannot be credibly asserted that the submitted articles are "about" the petitioner. The submitted articles do not discuss the petitioner's standing in the field or any other information so as to be considered published material about him as required by this regulatory criterion. Moreover, the AAO notes that the submitted articles similarly referenced numerous other authors. The material citing to the petitioner's work is more relevant to the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner submitted evidence showing that he served as a member of the editorial board for The petitioner also submitted evidence showing that he served as a peer reviewer for and as a technical editor for and . Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing his work. Dr. Cropping Systems Specialist and Assistant Professor, states:

> [The petitioner] worked in my group from May 2009 to February 2011 as a Postdoctoral Research Scientist at the after he completed his doctoral degree from the
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> During his tenure in my laboratory, [the petitioner] made significant breakthroughs in his research projects. . . . The ultimate benefit of his work was the development of new techniques that helped U.S. farmers reduce fertilizer and inputs and protect the environment.

Dr. comments that the petitioner "made significant breakthroughs in his research projects" and developed "new techniques that helped U.S. farmers reduce fertilizer and inputs and protect the environment," but Dr. fails to provide specific examples of how the petitioner's original techniques have been utilized throughout the farming industry or otherwise constitute original scientific contributions of major significance in the field. 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).

Dr. continues:

> [The petitioner] led and conducted research projects in my program in primary crops of Arizona. He employed remote sensing approaches for the crop yield evaluation in cotton, durum wheat, and vegetables under diverse nitrogen levels and growth conditions. [The petitioner] has high knowledge in the use of specialized equipment for the measurement of spectral indices for evaluating crop growth and yield. As an example, he proposed the use of spectral indices to improve grain protein in durum wheat grain, which is one of the most major crops in Arizona. The protein content in grain is an important issue because farmers can receive higher premiums at harvesting. If farmers can increase protein content in grains with optimized nitrogen rates, then they can obtain high premiums with low nitrogen input. Additionally, [the petitioner] employed the use of spectral indices for evaluating cotton under diverse nitrogen levels for improving N fertilizer management. Another important contribution by [the petitioner] was the use of overhead images (visible and infrared) to evaluate crop growth in diverse vegetables (i.e., lettuce, broccoli, and carrot) by varying planting dates and combine this information with agronomic management and predict the crop harvest time by employing crop modeling. The information from his research will improve farmer's profitability significantly.
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> [The petitioner] has published more than 20 journal papers in national and international recognized journals.
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> * * *
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> [The petitioner] has also been invited to present his research at international meetings in agronomy and agricultural sciences. His presentations brought attention and generated plenty of interests from other scientists. His discussion and information exchange has helped his peers in the remote sensing research area.

Dr. [redacted] asserts that the petitioner "employed remote sensing approaches for the crop yield evaluation in cotton, durum wheat, and vegetables under diverse nitrogen levels and growth conditions" and that the petitioner "has high knowledge in the use of specialized equipment for the measurement of spectral indices for evaluating crop growth and yield." Assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). Further, while Dr. [redacted] indicates that the petitioner "proposed the use of spectral indices to improve grain protein in durum wheat grain" and used "overhead images (visible and infrared) to evaluate crop growth in diverse vegetables," Dr. [redacted] fails to provide any additional information or examples to show how the petitioner's specific research findings have actually been applied by others throughout his field, so as to demonstrate that his original contributions have been of "major significance."

Dr. [redacted] also comments on the petitioner's research presentations at international meetings. The AAO notes that practitioners in many professional fields regularly hold meetings and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational

institutions, and government agencies. Participation in such events does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific conference presentations are frequently cited by other research scientists, have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, the AAO is not persuaded that presentations of the petitioner's work at various scientific meetings are sufficient evidence establishing that his work is of "major significance" to the field as a whole and not limited to the engagements in which his work was presented. The petitioner has failed to establish, for example, the impact or influence of his presentations beyond those in attendance so as to establish that his work was of major significance to the field.

Dr. , Professor - Department of Plant and Soil Sciences, states:

> My career includes more than 18 years with and 23 years with
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> * * *
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> The first time I met [the petitioner] was in 2005 when he initiated his doctoral studies under my supervision. Before he started studying at [the petitioner] played a pivotal role in evaluating wheat lines with higher grain yield for hot-irrigated and water stressed environments in a collaborative research project between a by using physiological approaches....
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> * * *
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> [The petitioner's] dissertation was based on the use of water spectral indices for selecting high yielding wheat lines for well-irrigated, water stress, and hot environments. . . . [The petitioner's] research demonstrated the use of water indices to identify and select high yielding wheat lines under optimal growth conditions (well irrigated) and under adverse conditions (drought and high temperature). He clearly demonstrated that the water indices could be used to select high yielding wheat lines under a wide array of environmental conditions. These results potentially will have a high impact in wheat breeding programs around the world because thousand [sic] of lines can be evaluated quickly and accurately by using the water indices as an indirect selection tool by the breeders.

Dr. asserts that the petitioner's "results *potentially will have* a high impact in wheat breeding programs around the world" (emphasis added), but Dr. does not provide specific examples of how the petitioner's research findings have already had a major influence on the field as of the date of filing. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec.

114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The documentation submitted by the petitioner does not show that his results have already been effectively applied in wheat breeding programs throughout the field, that his dissertation results were heavily cited by independent researchers, or that his findings otherwise equated to original scientific contributions of major significance in the field at the time of filing. While the petitioner's Ph.D. 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, presentation, or funding, must offer new and useful information to the existing pool of knowledge. It does not follow that every scientist 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.

Dr. further states:

> Subsequent to his graduation, [the petitioner] has published his results on the use of spectral indices to select for increased yield in wheat in various publications, including a paper in (2010). In this paper, [the petitioner] demonstrated the high A second paper was published in the regarding the association of
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> * * *
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> [The petitioner] has published more than 20 scientific papers in numerous internationally recognized journals . . . . I would also like to point out that his published works have been extensively cited in professional journals by many research scientists from around the world.

With regard to Dr. and Dr. comments regarding the petitioner's published and presented 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. 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. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS,* 580 F.3d at 1036. 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. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

In response to the director's request for evidence, the petitioner submitted citation evidence reflecting an aggregate of 97 cites to twelve of his published articles. Twenty three of the submitted citations are self-cites by the petitioner or his coauthors. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The AAO notes that the number of independent citations per article is minimal to moderate. For instance, the submitted documentation reflects that none of the petitioner's articles was independently cited to more than 33 times. Specifically:

1. was independently cited to twice (plus one self-citation by the petitioner);
2. independently cited to twice (plus two self-citations by the petitioner);
3. was independently cited to once;
4. independently cited to twice;
5. independently cited to once (plus one self-citation by the petitioner);
6. was independently cited to once (plus one self-citation by the petitioner);
7. was independently cited to twelve times (plus four self-citations by the petitioner and his coauthors);
8. was independently cited to twice (plus one self-citation by the petitioner's coauthor);
9. was self-cited by the petitioner's coauthor twice;

10. was independently cited to 33 times (plus nine self-citations by the petitioner and his coauthors);

11. was independently cited to 13 times (plus two self-citations by the petitioner and his coauthor); and

12. was independently cited to five times.

Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published work is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the minimal to moderate number of independent cites per article for his published work is indicative of original scientific contributions of major significance in the field.

Dr. Principal Scientist and Head of Mexico, supervised the petitioner's work at the and coauthored multiple research articles with the petitioner. Dr. states:

> [The petitioner] has been a leader in crop physiology, having publishing 23 scientific articles in various international peer-reviewed journals, including 9 articles related to remote sensing during the last ten years. The experience and knowledge accumulated during his years working in remote sensing (Master Studies and previous research projects) permitted [the petitioner] to propose a new to detect drought resistance at the genetic level among wheat lines under adverse growth conditions. . . . [The petitioner] conducted research over three years (2006, 2007, and 2008) to demonstrate that the is associated with five physiological mechanisms related to plant water status - which are traditionally measured using expensive and time consuming methods - to evaluate the genetic link between drought resistance and yield. [The petitioner] demonstrated that by using the it is possible to make direct inferences about these five plant mechanisms. The index gives breeders and crop physiologists the option to dispense with using the more complex protocols to evaluate water relations in plants. [The petitioner] also demonstrated that in a relatively short time (2-3 hours) hundreds of wheat genotypes can be evaluated for the making it applicable on a large scale under field conditions or in high throughput phenotyping facilities. These results are of significant value to crop scientists worldwide because thousands of lines are evaluated each year by breeders in research centers such as Characterizing potential wheat lines with better yield potential for adverse environments is challenging while the is a way to increase the efficiency in selection and therefore speed up the development of new cultivars.
>
> Additionally, [the petitioner's] results have important implications for making rapid irrigation decisions in season, therefore avoiding yield losses of crops. The can

> also be applied to other cereals *(i.e.,* barley and corn) and common crops *(i.e.,* soybean and cotton). [The petitioner] published these exceptional results in a prestigious peer review [redacted] Immediately, after its publication, distinguished scientists from other countries have cited [the petitioner's] findings during 2011 . . .

According to the citation evidence submitted by the petitioner, the article in [redacted] that the petitioner coauthored with Dr. [redacted] and Dr. [redacted] has been independently cited to only twice since its publication in 2010. Moreover, one of the two independent citations submitted by the petitioner is from an article published on September 2, 2011. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the minimal number of independent cites to the petitioner's article in [redacted] fails to demonstrate that his work was of major significance to his field. Moreover, Dr. [redacted] does not provide specific examples of how the [redacted] proposed by himself and the petitioner has significantly impacted the field at large or otherwise equates to an original contribution of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing or presenting research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. To be considered a contribution of major significance in the field of science, it can be expected that the petitioner's results would have already been reproduced and confirmed by independent experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

Dr. [redacted] continues:

> The findings made by [the petitioner] motivated me to write a proposal in 2010 to employ the [redacted] for the evaluation of genetic resources at [redacted] Each year, [redacted] selects wheat lines which are distributed to national wheat programs worldwide. The primary goal is the distribution of over 1,000 new advanced breeding lines annually to developing countries to increase grain yield under a range of conditions including drought. I am in charge of evaluating thousands of genetic resources using the [redacted] described by [the petitioner] for the season [redacted] Every promising line delivered by [redacted] has the potential to increase grain yield in different regions worldwide. Furthermore, I am in close interaction with Dr. [redacted] from the [redacted] wheat breeder) who is working to develop a portable sensor specifically for the [redacted] described by [the petitioner].

Dr. [redacted] comments that the [redacted] developed by himself and the petitioner is being utilized for the evaluation of genetic resources at the [redacted] but Dr. [redacted] does not provide specific examples of how their [redacted] has been successfully utilized by breeders and crop physiologists outside of the [redacted] or how the petitioner's [redacted] otherwise equates to an original contribution of major significance in the field. While the petitioner has contributed to

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various research projects, there is no documentary evidence demonstrating that his specific findings are recognized beyond those who have worked for the such that his original work constitutes a scientific contribution of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than primarily limited to a single research institution and its collaborative partners.

Dr. , Research Management Officer, Peru, states that he previously worked at the Dr. further states:

> I met [the petitioner] in Mexico when he was conducting experiments for his doctoral studies from 2006 to 2008 under Dr. supervision in the by its Spanish meaning).
>
> * * *
>
> [The petitioner] was an exceptional doctoral student working with enthusiasm and dedication in collecting and analyzing data, reporting results, and publishing scientific papers. After completing his doctoral studies at the [the petitioner] has demonstrated to be a leader in remote sensing and crop physiology by publishing more than 20 scientific articles in various prestigious international peer-reviewed journals such as
>
> Additionally, [the petitioner] has thrived in his career by working as a researcher in public centers *(i.e.,* Postgraduate College in) and most recently in the private sector (
>
> In particular, the article published by [the petitioner] in the has had important implications in plant breeding and crop physiology where a spectral was employed to detect genetic differences for drought resistance among wheat lines. These results are of significant value to crop scientists worldwide because thousands of lines can be characterized with this index for high yield. Plant breeders are looking for new strategies to increase the selection of lines/genotypes with high yield, especially for adverse growth conditions such as drought. This has the potential to be applied on a large scale under field conditions or in high throughput phenotyping facilities.

Dr. mentions the petitioner's articles in but the citation evidence submitted by the petitioner fails to demonstrate that his published findings in these journals have been heavily cited or were otherwise of major significance to the field. In addition, Dr. asserts that the petitioner's "results are of significant value to crop scientists worldwide" and that the petitioner's ' has the *potential* to be applied on a large scale under field conditions or in high throughput phenotyping facilities" (emphasis added), but Dr. does not provide specific examples of independent crop scientists who have utilized the petitioner's results or of "large scale" application of the

petitioner's [redacted] by plant breeders as of the date of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Id.*

The AAO notes that the above letters are all from the petitioner's former colleagues and supervisors. While such letters are important in providing details about the petitioner's role in various research projects, they cannot by themselves establish the impact of his work beyond his immediate circle of colleagues. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

Furthermore, 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). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters 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 references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a crop researcher who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this 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 has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner's evidence 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 petitioner submitted documentation from [redacted]. indicating that he started receiving a yearly salary of $75,000 in the first quarter of 2011. The petitioner also submitted "prevailing wage" search results from the Foreign Labor Certification Data Center Online Wage Library for "Soil and Plant Scientists" in the [redacted] Florida metropolitan statistical

area.[3] According to the submitted search results, the Level 4 (fully competent) prevailing wage for Soil and Plant Scientists in the preceding Florida locality is $63,066 per year. The petitioner, however, must submit evidence showing that he has earned a *high* salary or other *significantly high* remuneration relative to others in the field, not simply a salary that is above the amount paid to the majority of fully competent workers in Florida.[4] The petitioner's reliance on the wage amount paid to the majority of fully competent Soil and Plant Scientists in a single Florida county is not an appropriate basis for comparison in demonstrating that his earnings constitute a "*high* salary or other *significantly high* remuneration for services, in relation to others in the field." [Emphasis added.] *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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *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). Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

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

III. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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[3] A "prevailing wage" is defined as "trade and public work wages paid to the majority of workers in a specific area." *See* http://www.businessdictionary.com/definition/prevailing-wage.html, accessed on January 30, 2013, copy incorporated into the record of proceeding.

[4] The Florida Metropolitan Statistical Area is coextensive with Florida.

[5] 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

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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.

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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).