

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

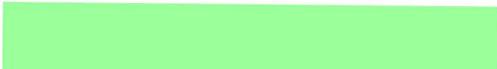


DATE: **JUL 10 2013**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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, 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.

The petitioner’s priority date established by the petition filing date is October 26, 2010. On April 18, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on November 28, 2012. On appeal, the petitioner submits a statement and additional documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

## 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.<sup>1</sup> 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.*

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

## II. ANALYSIS

A. Evidentiary Criteria<sup>2</sup>

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

The director discussed 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 submitted qualifying evidence under this 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.*

The director discussed 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* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

The director determined that the petitioner met the requirements of this criterion. The AAO affirms the director's favorable determination as it relates to this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

than to a project or to an organization. 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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner asserts eligibility under this criterion based on his citation record. The director determined that the field's reaction to the petitioner's published works was not sufficient to establish that his research findings constitute contributions to his field that are of major significance. Accompanying the initial petition filing, the petitioner provided a *Web of Knowledge* printout reflecting 98 citations relating to 14 works, with self-citations omitted. In response to the RFE, the petitioner provided several forms of evidence relating to citations to his work. However, the majority of this evidence contains citations to the petitioner's work that postdate the petition's priority date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Notwithstanding the significant number of citations that postdate the filing of the petition, generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work. However, moderate citation of individual articles is not an automatic indicator that the petitioner's work has been of major significance in the field. In this case, according to the printout from *Web of Knowledge*, only three of the petitioner's articles have garnered moderate citation. Moreover, the citations to his work generally provide background information within the citing author's discussion rather than the author exhibiting any reliance upon the petitioner's research findings.

The petitioner notes that the director mistakenly considered magazine reports related to his research under the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), when the petitioner requested the evidence be considered under this criterion. The petitioner's work received coverage in two issues of [REDACTED] the publication's Deputy Assistant Managing Editor indicated that the journal highlighted the petitioner's work "because it was newsworthy, scientifically significant, and societally important." However [REDACTED] also indicated that the petitioner's research "could have implications for drug development" indicating that the actual impact of the petitioner's work might come to fruition in the future. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). One of the articles [REDACTED] referenced mentioned the petitioner while the other article discussed one of the projects in which the petitioner assisted, but did not mention him within the article. The final coverage appeared in *Faculty of 1000*.

The regulations contain a separate criterion regarding published material about the petitioner. 8 C.F.R. § 204.5(h)(3)(iii). The AAO will not presume that evidence relating to or even meeting the published material 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 published material and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.

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. *See also Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (rejecting an interpretation of 8 C.F.R. § 204.5(h)(3)(vii) that would “collapse” that criterion into 8 C.F.R. § 204.5(h)(3)(viii)). There is no presumption that published material that is not even about the petitioner such that it meets 8 C.F.R. § 204.5(h)(3)(iii) meets the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). Specifically, there is no presumption that every published article documents a contribution of major significance in the field; rather, the published material must be relevant and probative as to the impact of the research discussed in the article. The published material consists of brief reviews of the petitioner’s results without any discussion of how the field is utilizing these results. Consequently, the published material is not probative of the petitioner’s ultimate impact in the field.

The petitioner asserts that the director quoted select sections from the letters but ignored other relevant information each author expressed. The petitioner points to four letters on appeal as examples. The petitioner also discusses several unpublished and nonbinding AAO decisions. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Although the director did not discuss the full content of each letter in detail, the AAO does not agree with the petitioner that any omitted elements demonstrate the petitioner’s eligibility even in conjunction with the other evidence on record. The first letter is from [REDACTED], Professor and Dean of the [REDACTED] stated that the petitioner’s “pioneering contributions” include developing a methodology to solve a long-standing problem within the petitioner’s field. More specifically, [REDACTED] indicated that the petitioner developed a computational model that “played a crucial role in interpreting the experimental folding data to unravel the folding mechanism of an extremely important protein known as the Green Fluorescent Protein.” [REDACTED] also indicated that the Nobel Prize was awarded for this protein’s discovery in 2008; however, he did not indicate that the petitioner was associated with its discovery or with the Nobel Prize. [REDACTED] alleged that the petitioner’s computational methodology “provided extremely valuable insights,” but did not describe any measurable impact resulting from these insights. [REDACTED] also stated the petitioner’s “research has illuminated and greatly expanded our fundamental understanding of the mechanisms of protein aggregation and it is a major step forward for the whole field.” Neither [REDACTED] nor the petitioner established how this expanded understanding resulted in a significant impact within the petitioner’s field.

The letter from [REDACTED] Assistant Professor in the Department of Chemistry at the [REDACTED] [REDACTED] also claimed that the petitioner's findings are "path changing" and "groundbreaking," but [REDACTED] offered no examples of drug companies that have adopted the petitioner's research findings or methodology in developing their products. [REDACTED] like the remaining references, bases her opinion regarding the petitioner's eligibility on being published and his nominal citations. The remaining three letters also discuss the petitioner's research and the fact that others in the field have cited his work. The moderate level of citation and the content of the citations themselves are not indicative of contributions of major significance in the field.

Within [REDACTED] letter, she stated that the petitioner "made extraordinary discoveries, which had tremendous impact on the field," but described this impact as "it is possible now to design drugs, which can interact with the protein . . . slowing down protein aggregation and disease progression." [REDACTED] asserts that she employed the petitioner's results and methods in her own research and that his findings served as the standard by which she verified her own research. Notably, [REDACTED] indicated on her curriculum vitae that she spent a total of 13 months as a visiting professor at the [REDACTED] between 2000 and 2011, where the petitioner has been employed as a postdoctoral research associate since 2006. [REDACTED] letter does not demonstrate the petitioner's impact beyond his immediate circle of colleagues.

Regarding the expert letters submitted with the initial petition, [REDACTED] Assistant Professor in the Department of Physics at the [REDACTED] referenced the petitioner's work and future, possible benefits in the petitioner's field. [REDACTED] stated: "A therapeutic strategy to combat Alzheimer's disease comes out from these results. Drug molecules can be developed to prevent the A $\beta$  peptide from sampling hairpin like conformations. Inhibiting hairpin-like conformations will slow down the protein aggregation and the severity of the diseases [sic] symptoms in the Alzheimer's patients." While [REDACTED] speculates as to where the petitioner's research can lead in the future, she does not identify how the petitioner has already made a significant impact in his field, which is required by this regulatory criterion. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. This evidence does not establish that, as of the priority date, the petitioner had made contributions of major significance in the field as required by the regulation.

The remaining expert letters accompanying the petition provide essentially the same claims as [REDACTED] in that the authors identified future benefits in the field and the significance of the petitioner's area of research, but failed to describe any significant impact his research findings have had in his field in the present day.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative

testimonial and documentary evidence, where available.” *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner’s skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795; 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” but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Additionally, each letter submitted in support of the petitioner’s eligibility claim appears to have been drafted in response to the petitioner’s efforts in attaining permanent resident status in the United States. While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. Such independent evidence might include but is not limited to letters from independent industry experts with firsthand knowledge of the petitioner’s impact in the field, media coverage, and citations to the petitioner’s 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 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. In view of the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

*Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director determined that the petitioner met the requirements of this criterion. The AAO affirms the director’s favorable determination as it relates to this criterion.

## B. Summary

The petitioner has failed to satisfy the antecedent 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 have 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.<sup>3</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> 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).