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: AUG 0 6 2014 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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 30, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on March 3, 2014. The appeal will be dismissed.

According to the petition, filed on October 22, 2013, the petitioner seeks classification as an alien of extraordinary ability in the sciences, as a cancer research scientist, 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 that the petitioner has 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present 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)-(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, the petitioner files additional supporting documents, including online printouts entitled " " and information about tax treaties from the U.S. Internal Revenue Service (IRS) website. The petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (vi), (vii), (viii) and (ix). For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. THE 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.

United States 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. 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 initial evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 our evaluation of the 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." *Kazarian*, 596 F.3d at 1121-22.

The court stated that our 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)." *Kazarian*, 596 F.3d 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 case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the

[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 (vi).

regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion because she has received (1) a fellowship, and (2) worked on research the funded through a grant. The petitioner asserts that fellowships are awarded to "highly qualified young graduates and/or post-doctoral fellows or equivalent who wish to broaden or acquire new experience in ontological research in a cancer-focused laboratory abroad." The petitioner further asserts that fellowships are "given only to applicants who have shown excellence in their field of endeavor. Not everyone can get it." To show that the Society of grant meets this criterion, the petitioner asserts that the " [sic] is world's oldest and largest private cancer center" and that the "has earned the distinction as one of the premier cancer centers worldwide."

The petitioner has not shown that she meets this criterion. First, the ellowship and Society of grant constitute research funding opportunities. Research funding, through grants or fellowships, serve to fund a scientist's work. Every successful scientist who engages in research, of which there are hundreds of thousands, receives funding from somewhere. Indeed, the petitioner states on appeal that the ' has given out more than €657 million ($890 million U.S. Dollars) for research projects conducted at institutions, universities, and hospitals throughout Italy and it has given out more than €33 million (over 444 million U.S. Dollars) for study grants to young researchers . . . ." The past achievements of the principal investigator or fellowship recipient are a factor in grant proposals; the funding institution has to be assured that the fellowship or grant recipient is capable of performing the proposed research. Nevertheless, a research grant or funding

[2] The petitioner does not claim that she meets the regulatory categories of evidence not discussed in this decision.

fellowship is principally designed to fund future research, and not to honor or recognize excellence. Thus, the fellowship and grant are not prizes or awards for excellence.

Second, achievements in academic study and qualifying for training positions are not achievements in a field of endeavor, but constitute training for a future field of endeavor. As such, pre-doctoral and postdoctoral fellowships cannot be considered nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor. While they may be prestigious, fellowships are not nationally or internationally recognized prizes or awards because only other recent graduates or current students – not recognized experts in the field – compete for such funding. Indeed, according to the petitioner, the application of the fellowship is not open to all scientists in the cancer research field. Rather, it is only open to "young graduates and/or postdoctoral fellows or equivalent." The Call for Proposals 2013" similarly shows that only individuals who have obtained their degrees after December 31, 2006, or after December 31, 2004 for clinicians, may apply for the fellowship. According to a January 15, 2014 letter from Ph.D. Member of I, the fellowship "is awarded to promising scientists . . . ." According to the July 19, 2013 letter from the I "provide[s] research fellowship to young Italian scientists." Receiving funding for one's research and academic training does not constitute receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather, to recent graduates or current students seeking to further their research, training, and experience.

In addition, although the petitioner has submitted some evidence relating to the history and reputation, the petitioner has not submitted sufficient evidence relating to the reputation or prestige of the fellowships the offers or evidence showing that the fellowships could be considered nationally or internationally recognized prizes or awards for excellence. As such, the petitioner's fellowship does not meet this criterion.

Third, the evidence in the record is insufficient to show that the petitioner has received a grant from the Society of or that the grant constitutes a nationally or internationally recognized prize or award for excellence. The petitioner has not submitted any evidence from showing that she is an awardee of the grant. Indeed, according to Dr. August 5, 2013 letter, it was "Dr. Genitourinary Oncology Service, Department of Medicine, who recently received a grant from the to evaluate DNA repair in tumors from germ cell tumor patients enrolled onto a randomized clinical trial." In addition, a document entitled "The Society of Budget Report" lists Dr. as the study's principal investigator and , M.D., as the co-principal investigator. The document lists the petitioner as a research fellow. The petitioner has not shown that the Society of awarded the research grant to her. Rather, it appears that the Society of awarded the research grant to Dr. and the grant funds a study in which the petitioner is hired as a research fellow. Moreover, although the petitioner has provided online printouts relating to the Society of she has not provided sufficient evidence relating to the selection criteria and process of the research grant, such that it could be considered a nationally or internationally recognized prize or award for excellence.

Indeed, the Society of online printouts make no mention of grants that the organization offers. As such, the Society of grant does not meet this criterion.

Finally, the record includes documents relating to the petitioner's academic degrees and her involvement with other research projects. On appeal, the petitioner has not specifically asserted that these accomplishments meet the criterion. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States 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 United States District 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 presented documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *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).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion, because she is (1) a member of the Scientific ; (2) an associate member of the (3) a member of the ; and (4) a member of the .

The petitioner's supporting evidence, including a September 27, 2013 letter from , Ph.D., Executive Director of does not establish that the petitioner's full membership in constitutes a membership in a qualifying association. The materials about the petitioner submitted reveal that full membership "is conferred upon those who have demonstrated noteworthy achievements in research." According to its bylaws, these achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that does not take a particularly strict view of noteworthy achievements. Specifically, as Dr. indicates in his letter, one can show "noteworthy achievements in research" by showing "primary authorship of two papers[, which include] refereed journal articles, patents or refereed monographs[]." Primary authorship of one or two papers is not an outstanding achievement. Thus, the petitioner's membership in Sigma Xi cannot serve to meet this criterion. While the petitioner submitted evidence that 200 of the nearly 60,000 members of are Nobel Laureates, the fact that a small percentage of members have gone on to receive this major award does not suggest or imply that requires outstanding achievements of its members.

Even if the petitioner had demonstrated that her membership in is qualifying, and she has not, she has not shown that she's a member of a second qualifying association. The plain language

of the criterion requires evidence of membership in associations, in the plural, which require outstanding achievements of their members. *See* 8 C.F.R. § 204.5(h)(3)(ii). This is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. The record lacks evidence that the petitioner's remaining memberships are in qualifying associations.

The record shows that the petitioner is an associate member of the an international professional organization of scientists working in cancer research. According to a July 18, 2013 letter from Director of Membership, an associate membership applicant "must be nominated by one current Active, Emeritus, or Honorary members [sic] in good standing in the who can attest to the candidate's achievements and affirm that his or her research adheres to accepted ethical standards." The petitioner has not submitted sufficient evidence showing that "achievement" as stated in Ms. letter constitutes "outstanding achievements." In addition, neither Ms. letter nor any other evidence in the record indicates that the requires that recognized national or international experts judge its associate members' "outstanding achievements" as required by the plain language of the criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner has submitted documents relating to the and her membership in the According to a July 16, 2013 letter from Senior Membership Coordinator, the petitioner "received a one year sponsored membership from starting April 1, 2012 and she continues her membership as a self-paid student member today." Although the petitioner has presented an online printout about the awards that the has received, she has not provided sufficient evidence relating to how one becomes a member of the Moreover, the petitioner has not presented evidence showing that the requires "outstanding achievements" from its members or that recognized national or international experts judge the "outstanding achievements," Rather, Ms. letter indicates that the "is open to all scientists, physicians, and engineers, and to all other individuals interested in science, mathematics, and engineering, in the roles of science and technology in society, and in the objectives of the Academy."

The petitioner has submitted a July 18, 2013 letter from Office of Postdoctoral Affairs, stating that the petitioner is the event coordinator of The letter does not state that the petitioner is a member of nor does it provide information on how one becomes a member of Significantly, neither the letter nor any other evidence in the record establishes that requires from its members "outstanding achievements" as judged by recognized international or national experts, as required by the plain language of the criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the petitioner has not presented documentation of her 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 petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

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 concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion, based on (1) her scientific publications in scientific journals; (2) her presentations at conferences; and (3) reference letters from scientists who are familiar with her work.

The petitioner has not shown that she meets this criterion. First, publication of the petitioner's articles is insufficient to show she meets this criterion. The regulations contain a separate criterion regarding the authorship of published articles. *See* 8 C.F.R. § 204.5(h)(3)(vi). Evidence directly relating to one criterion is not presumptive evidence that the petitioner meets a second criterion. Such a presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meets at least three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3). Accordingly, the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication of articles is not sufficient evidence under this criterion absent evidence that the articles are of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In 2010, the *Kazarian* court reaffirmed its holding that our adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a published article is a contribution of major significance, a relevant factor is the impact an article has after publication. In this case, the petitioner has not submitted sufficient evidence showing that the impact of any of her articles has risen to such a level that the article constitutes a contribution of major significance in the field. For example, while not the only means of demonstrating her impact, she has not demonstrated that her articles have garnered frequent and widespread citation.

Second, the prestige of a journal does not indicate that that all articles the journal published constitute contributions of major significance in the field. According to Business Development Director of the , which publishes "is a highly respected and highly cited biomedical journal." It has an acceptance rate of less than 10 percent and a journal impact factor of 13.214. According to Ph.D., Chief Editor of the journal has a final acceptance rate of 10 percent and its 2012 impact factor was 11.9. According to Dr. Editorial Manager of the journal's impact factor is 8.278 and it is ranked 27th out of 290 journals in the biochemistry and molecular biology ISI category. The fact that the petitioner's articles were published in these journals does not establish that her articles constitute contributions of major significance in the field, absent evidence of the articles' impact in the field once disseminated in the field.

Third, although the documents in the record show that one of the petitioner's abstracts was accepted for poster presentation at the Third and that the petitioner participated in a poster session at the a conference in Rhode Island, the petitioner has not demonstrated the impact of these presentations upon

dissemination in the field. At best, the evidence shows that the petitioner's research, as presented in conferences, has some relevance in the field, with the conference organizers determining that her work has sufficient promise to warrant inclusion among the other poster presentations. In addition, although the petitioner claims to have been a poster speaker at the conference, the evidence in the record shows that she was not one of the scientists chosen to make an oral presentation at the conference.

Fourth, the petitioner has submitted reference letters from scientists who are familiar with her research. While these letters establish that the petitioner's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for a university, publisher, or grantor to accept any research for graduation, publication, or funding, the research must offer new and useful information to the pool of general knowledge. The evidence in the record demonstrates that the petitioner has performed original research that added to the general pool of knowledge. For example, Dr. states that the petitioner's research "has led to a better understanding of the underling mechanism of cisplatin sensitivity and resistance among germ cell tumors (GCT)." Ph.D., Associate Professor of Cell and Molecular Biology states that the petitioner's research has "greatly improved our understanding of the molecular mechanisms of cisplatin sensitivity and resistance, and created new opportunities for the successful treatment of resistant tumors." Dr. states that the petitioner's studies "have provided insight discovery on TGCT [testicular germ cell tumors]." According to , Ph.D., Assistant Professor of Human Anatomy, Department of Biomedicine and Prevention, , the petitioner's work "represents a very important step for the identification of an innovative and truly effective therapy that American men at first, and patents trough [sic] the world might have available in the near future." According to , Ph.D., Chair at the Department of Medicine and Cell Biology Program, the petitioner's studies relating to the treatment of cultured tumor cells "are of considerable significance in understanding cisplatin sensitivity/resistance and designing treatment protocols for cisplatin resistant patients." The evidence shows that the petitioner's research has added to the general pool of knowledge. Not 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 this case, the petitioner has not submitted sufficient evidence showing contributions of major significance.

Instead, the reference letters infer that the petitioner's research has the potential of becoming contributions of major significance in the field. For example, Dr. notes that the "significance of [a] study [in which the petitioner is involved] holds tremendous potential to impact upon the outcome of patients with GCT as well as those with other malignancies treated with cisplatin (head and neck, bladder, ovarian, lung, esophageal, and gastric)." Ph.D., Associate Professor in Genetics and the Associate Cancer Center, Director for Translational Outreach at the , notes that a "novel therapeutic approach [in which the petitioner assisted in developing] has [the] potential to impact a significant patient populations affected by myeloid leukemia and solid tumors." Dr. further notes that the petitioner "will have a material impact on [the] efforts to successfully commercialize the resulting new drugs" and that her

"contributions will promote both scientific advancement and economic development." Dr. states in his June 19, 2013 letter that the petitioner "is highly likely to make important contributions to our understanding of the cellular DNA damage response and cancer susceptibility in general." According to a July 22, 2013 letter from , M.D., Department of Medicine Chair, Chair in Clinical Oncology, the petitioner's research work on TGCT "is of substantial potential value in identifying new therapies for these patients and to base such therapies on the underlying biological determinants of malignant cell growth." Associate Professor of Pharmacology, Department of System Medicine, states that the petitioner's "experience and future work activity have the potential to help cancer patients." , Ph.D., Assistant Professor, Department of Biology, states that the petitioner's "research may positively impact American cancer patients." These reference letters are insufficient to show that the petitioner has already made qualifying contributions. Rather, they opine that the petitioner's research might in the future impact the field.

The Board of Immigration Appeals (the Board) has held 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 cases). The Board has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* 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). Vague, solicited letters from colleagues or associates 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, *aff'd in part*, 596 F.3d at 1115.[3] The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 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, as this decision has done, 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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). *See also Visinscaia*, 2013 WL 6571822, at *6 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

While the reference letters confirm that the petitioner's work is original and contributes to the pool of knowledge in the field, the letters do not establish that her impact in the field has risen to a level

[3] In 2010, the *Kazarian* court reiterated that our 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.

consistent with a contribution of major significance. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of mechanical engineering. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

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 concluded that the petitioner has met this criterion. The petitioner has submitted evidence showing that she has authored a number of scholarly articles that are published in scientific publications, including the Accordingly, the petitioner has presented evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the petitioner asserts that she meets this criterion because she presented for the Third and she participated in a poster session at the a conference held in Rhode Island. A scientific conference, however, is not an artistic exhibition or showcase. *Kazarian,* 596 F.3d at 1122. Accordingly, the petitioner has not presented evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion based on her role in Dr. laboratory at her involvement in a research project funded through a grant from the Society of her involvement with the laboratory at the The petitioner asserts that the evidence shows that "she had played more than a supporting role" in these organizations and establishments.

The petitioner has not shown she meets this criterion. First, the petitioner has not shown that she has met this criterion based on her role in Dr. laboratory. The petitioner has presented two letters

from Dr. , one is dated August 5, 2013 and the other is dated January 15, 2014. The August 5, 2013 letter states that the petitioner "works as a research scientist in [Dr. laboratory" at the The second letter states that the petitioner "works as a lead research scientist in [the] laboratory" and "lead[s] testis cancer research in [the] laboratory at The petitioner has not provided any information relating to when she became a lead research scientist or if she was a lead research scientist when she filed her petition in October 2013. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner cannot secure a priority date based on the anticipation of a future promotion that would show her leading or critical role for an organization or establishment. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Moreover, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In addition, although the petitioner has submitted documents relating to and information relating to Dr. , she has not submitted documents relating to the prestige or reputation of Dr. laboratory. According to online printouts, is the world's oldest and largest private cancer center and is one of 41 National Cancer Institute-designated Comprehensive Cancer Centers. Even if the evidence shows that is an organization or establishment that has a distinguished reputation, the evidence does not show that Dr. laboratory, one of an unspecified number of laboratories at similarly has a distinguished reputation independent of Dr. states that Dr. is "a world-renowned expert in DNA repair." Dr. letters state that she has many years of research experience, is a tenured professor, has published scholarly articles and has been given awards for her work in the field of DNA repair and cancer. The petitioner, however, has presented minimal information on Dr.'s laboratory. According to an online printout about Dr. her laboratory demonstrated that the breast cancer suppressors BRCA1 and BRCA2 are crucial for homologous recombination repair and DNA double-strand breaks repair during meiosis. The petitioner, however, has not presented evidence that Dr. laboratory has received any awards or has been otherwise recognized in the field. As such, the petitioner has not shown that laboratory is an organization or establishment that has a distinguished reputation.

Second, the petitioner has not provided sufficient evidence showing that her involvement in a research project funded by a grant from the Society of meets this criterion. According to Dr. s June 18, 2013 letter, the petitioner "will play an integral role" in a study that evaluates DNA repair in tumors from germ cell tumor patients. According to Dr. January

14, 2014 letter, the petitioner "will have a leading role" in the study. Dr. similarly states in her January 15, 2014 letter that the petitioner "will play a leading and critical role [in] the study." The evidence in the record does not specify what, if anything, the petitioner had completed for the study at the time she filed her petition in October 2013. The supporting documents indicate that at the time of filing, it was anticipated that the petitioner would play a role in the study, but she had not yet played either a leading or critical role. As discussed, the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In other words, the petitioner must show that at the time of filing, she had already performed a leading or critical role for a qualifying organization or establishment. In addition, assuming the people who are involved in this study could be considered an organization or establishment, the petitioner has not shown that the organization or establishment has a distinguished reputation, as required under the plain language of the criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

Third, the petitioner has not provided sufficient evidence showing that her participation in a collaborative research project involving Dr. laboratory and Dr. laboratory at the meets this criterion. According to Dr. January 9, 2013 letter,[4] in February 2012, Dr. laboratory began a collaborative research project with Dr. laboratory to study During this collaborative research project, the petitioner " " Dr. states in his June 19, 2013 letter that the petitioner "was the lead project investigator in the laboratory." The evidence shows that the petitioner was not directly involved with Dr. laboratory at the Rather, while working at Dr. s laboratory, the petitioner participated in a collaborative project between Dr. laboratory and Dr. laboratory. Assuming that the collaborative project constitutes an organization or establishment, the petitioner has not provided evidence showing that the collaborative project has a distinguished reputation. Dr. states that the collaborative project "culminated in the publication of a primary research manuscript in the scientific journal, for which [the petitioner] and Dr. are key contributing authors." Publication of a scholarly article alone, without sufficient information relating to the impact or reception of the scholarly article in the field, is insufficient to show that the collaborative project has a distinguished reputation in the field. Similarly, although the petitioner has submitted documents relating to the these documents provide general information about the university and do not establish the prestige or reputation of the collaborative research project between Dr. s laboratory and Dr. s laboratory.

Fourth, the petitioner has not provided sufficient evidence showing that her involvement in the meets this criterion. According to Dr. July

[4] Although Dr. letter is dated January 9, 2013, it appears that the date is a typographic error. The digital signature notation on the letter is dated January 10, 2014 and the petitioner filed the letter in January 2014 in support of the petitioner's response to the director's request for evidence (RFE).

16, 2013 letter, the worked with the petitioner in collaborative research projects. Dr. states in his January 9, 2014 letter that the "worked with [the petitioner] to discover basic biological mechanisms of genomic instability that may relate to immune system deficiencies and cancer development." Dr. further provides that the petitioner's "contribution has been vital for our work" and that "[w]ithout her knowledge and skills we would not be able to reveal a novel antineoplastic role of AID [activation-induced cytidine deaminase] that can be triggered by inhibition of HR [homologous recombination], or define the novel mechanism of action for an experimental new drug candidate." The petitioner has submitted insufficient evidence showing that the has a distinguished reputation. According to Dr. the "is a non-profit research institute dedicate to genetics and genomics research to improve human health." Dr. further states that one of the joint research projects resulted in the publication of a scholarly article in the According to an online printout, the has "more than 1,500 employees" and its "mission is to discover precise genomic solutions for disease and empower the global biomedical community in the shared quest to improve human health." Neither these documents nor any other documents in the record, however, establish the reputation or prestige or impact in the field.

On appeal, the petitioner submits online printouts relating to which is Dr. company that spun off from the The petitioner has not provided sufficient evidence relating her involvement with or documents showing that this company has a distinguished reputation in the field.

Accordingly, the petitioner has not presented evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion because she is being paid $44,000 annually and is tax exempt. The petitioner has submitted a December 4, 2012 letter from the stating that she was reappointed as a research fellow in Dr. laboratory for a year from March 11, 2013 through March 10, 2014, with a stipend of $44,100. On appeal, the petitioner submits an online printout from the IRS relating to Tax Treaties. The plain language of the regulation does not suggest that the existence of tax exemptions for the petitioner's salary or other remuneration is a relevant consideration. Rather, at issue is the salary or other remuneration the petitioner has commanded, not the amount she retained after taxes.

The petitioner has not submitted evidence relating to salary or remuneration for service of other scientists working in the same field as the petitioner. Instead, on appeal, the petitioner makes the conclusory statements that she "is here on a J visa and upon information and belief [$44,000] is tax free and considered a high salary for individuals in the same position as her." Going on record

without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As the petitioner has not provided compensation information relating to other scientists in the same field, she has not shown that her annual stipend of $44,100, even in the untaxed amount, constitutes a high salary or other significantly high remuneration for services.

Accordingly, the petitioner has not presented evidence showing that she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

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 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 we conclude 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, we 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 presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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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[5] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain 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* INA §§ 103(a)(1), 204(b); 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).