(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 05 2014 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, 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, as a cardiologist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, the petitioner asserts that he met the requirements of three of the regulatory criteria for demonstrating eligibility as an alien of extraordinary ability. Specifically, the petitioner asserts that in addition to meeting the criterion for scholarly articles, he also meets the criterion as a judge of the work of others and the criterion for original contributions in the field of endeavor.

I. LAW

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

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

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

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

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

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

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

II. ANALYSIS

A. Evidentiary Criteria[2]

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[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).

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

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

The petitioner previously submitted evidence under this criterion. The director's decision concluded that the petitioner did not meet this criterion and the petitioner does not identify any factual or legal error relating to this criterion on appeal. Consequently, the petitioner abandoned this claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner initially submitted evidence under this criterion along with his Form I-140. The director determined in his decision that the petitioner did not meet the requirements of the regulation. The petitioner does not raise this issue on appeal. Therefore, the petitioner abandoned this claim. *See Sepulveda,* 401 F.3d at 1228; *Hristov*, 2011 WL 4711885, at *9.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner also initially submitted evidence under this criterion along with his Form I-140. The director determined in his decision that the petitioner did not meet the requirements of the regulation. The petitioner does not raise this issue on appeal. Accordingly, the petitioner abandoned this claim. *See Sepulveda,* 401 F.3d at 1228; *Hristov*, 2011 WL 4711885, at *9.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

In the request for additional evidence (RFE), the director noted that while the petitioner had submitted requests to review manuscripts for a journal, the petitioner had not submitted evidence that he actually performed those reviews. The petitioner's response letter did not address this criterion and the evidence the petitioner submitted at that time included the same requests to review manuscripts the petitioner previously submitted. The director reaffirmed the findings in the RFE, concluding that the submitted evidence was insufficient to establish this criterion. On appeal, the petitioner states: "Please see attached evidence of Journal review work." The petitioner did not, however, attach any evidence. Nevertheless, the record of proceeding contains two emails demonstrating that the petitioner did complete a review of at least one manuscript and was requested to review the resulting revisions of that manuscript.

Accordingly, the AAO withdraws the director's determination in this regard.

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

The director, after considering the reference letters, scholarly articles, citations and presentations, found that the petitioner failed to satisfy the requirements set forth at 8 C.F.R. § 204.5(h)(3)(v). The plain language of the regulation requires both that the petitioner's contributions be original and of major significance in the field. USCIS must presume that the word "original" and the phrase "major significance" are not superfluous and, thus, that they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner first asserts that he is a cardiologist at the and that the hospital has garnered acclaim for its exceptional cardiovascular care and survival rates. The record does not contain sufficient evidence to indicate the level of acclaim that the petitioner asserts the hospital enjoys. Regardless, the petitioner cannot establish his own individual contributions of major significance through affiliation with a distinguished institution alone. The regulations contain a separate criterion for individuals who have performed a leading or critical role for organizations or establishments with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The regulations do not suggest that working for such an organization or establishment in any capacity creates a presumption that the petitioner meets the contributions criterion. Rather, the contributions criterion requires evidence of individual impact in the field rather than the reputation of the petitioner's employer.

Additionally, the petitioner asserts on appeal that his research has been published in acclaimed journals and his articles have garnered over five citations. Regarding the petitioner's published work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). Evidence relating to or even meeting the scholarly articles criterion is not 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, the two criteria are not interchangeable.[3] 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. Thus, there is no presumption that every published article or presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. Regarding the petitioner's citation record, the record reveals that the petitioner's publications have garnered a moderate number of citations. A moderate number of citations, without supplemental evidence providing some context for the significance of the citations, does not conclusively demonstrate that the petitioner's work is widely known and has had a significant impact on the field.

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

The petitioner submitted twelve support letters to demonstrate his eligibility under this criterion and to demonstrate that he is an alien of extraordinary ability. The director quoted several of these letters and concluded they did not demonstrate that the petitioner's original research constitutes contributions of major significance. On appeal, the petitioner asserts that the "testimonials from prominent experts in the field make clear that [he] is very highly regarded for both clinical and research work." The petitioner does not, however, explain how the letters identify specific contributions and their impact in the field.

The bulk of the letters appear to be from colleagues from his immediate work environment. According to his curriculum vitae, the petitioner was a fellow in the Cardiovascular Diseases division at the The petitioner submitted letters from the following colleagues: M.D., Program Director of the Cardiology Fellowship Program, M.D., Associate Professor of Medicine, M.D., Associate Professor of Clinical Medicine, M.D., Associate Professor, M.D., Associate Professor of Medicine, Assistant Professor of Medicine, M.D., Assistant Professor of Medicine, and MD, Assistant Professor of Medicine at

While the letters discuss the petitioner's research, they do not indicate that his results have already impacted the field. For example, Dr. states:

> [The petitioner] was the first researcher to (1) establish that Plasma Serotonin levels are elevated in patients with heart failure, of which this finding having [sic] the potential for leading to the discovery of newer agents for the treatment of heart failure; (2) assessed whether the modality of using Biventricular Pacemakers in a subset of patients with heart failure should be changed and be deemed unnecessary given the lack of improvement to these subset of patients; and (3) provide evidence that some antidepressants such as Fluoxetine and Setraline may have innovative use in heart failure patients by improving the symptoms experienced and increasing survival rates of these patients.

Dr. does not identify any independent research institution pursuing new research based on these original discoveries. Dr. also does not suggest that these discoveries have already resulted in new clinical practice guidelines in the field, clinical trials or have otherwise impacted the field at a level consistent with a contribution of major significance. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6, 8 (D.D.C. Dec. 16, 2013) (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).

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*

v. USCIS, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[4] Furthermore, while letters from immediate colleagues are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's impact beyond his immediate circle of colleagues.

The petitioner also submitted the following letters from other experts in his field currently working at independent institutions: M.D., Associate Medical Director of Informatics at Clinical Instructor of Medicine, M.D., Assistant Professor of Medicine, and M.D., Physician at In their letters, Dr. and Dr. both acknowledge that they have been requested to write a letter based on a review of the petitioner's curriculum vitae and his publications. Letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

As with the previous group of letters, this second group of letters does not include specific examples of how the petitioner's contributions influenced the field. For example, Dr. asserts that one example of the petitioner's contributions is identifying "a class of patients who are more likely to benefit from [resynchronization therapy and hyperresponders] by studying other medical predictors that have previously been undervalued in this context." Rather than explain how this discovery is already changing treatment guidelines, Dr. speculates about possible future impact, stating: "His findings through further validation and possible larger adoption would decrease the direct and indirect medical costs associated with unnecessary procedures being applied to all patients with advanced heart failure."

Moreover, the probative value of the letters is further undermined by the fact that various identical portions of the text appear in letters from different authors. For example, Dr. 's letter includes the identical language from Dr. 's letter quoted above. This language also appears verbatim in the letter from Dr. . In addition, the letters from Dr. , Dr. , and Dr. contain the following identical excerpt:

> [The petitioner's] nationally recognized reputation is a testament to his numerous publications which total 12 and has appeared in internationally renowned journals such as with an Impact Factor of 14.816 and ranked 1st among journals in Hematology, Peripheral Vascular Disease and Cardiac & Cardiovascular categories, the with an Impact Factor of 14.2, Complementing his extensive research publications, [the petitioner] has also given 11 oral and poster

[4] 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.

presentations of his abstracts-research at such esteemed conferences as the [redacted] and the [redacted] [The petitioner] has also received travel grants from the [redacted] to attend the [redacted]

The fact that identical excerpts are found in multiple authors' letters suggests that the language is not their own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). *See also Visinscaia*, 2013 WL 6571822, at *8 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

For all of the foregoing reasons, the petitioner did not establish that he qualifies under 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 in the decision that the petitioner established his eligibility under 8 C.F.R. § 204.5(h)(3)(vi) and the record supports the director's conclusion in this regard.

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

The petitioner previously submitted evidence relating to this criterion. The director concluded that the letters did not demonstrate how the role was leading in comparison to other positions at the organizations or how the petitioner contributed to the standing of the organizations. The petitioner does not identify any factual or legal error on appeal. Therefore, the petitioner abandoned this claim. *Sepulveda,* 401 F.3d at 1228 n.2; *Hristov*, No. 09–CV–27312011, 2011 WL 4711885, at *9.

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

The petitioner initially submitted background evidence relating to the salary for cardiologists. The director did not make a specific finding regarding the petitioner's salary in the decision. However, the petitioner does not identify any factual or legal error relating to this criterion on appeal. Consequently, the petitioner abandoned this claim. *Sepulveda v. U.S. Att'y Gen.,* 401 F.3d at 1228 n.2; *Hristov*, No. 09–CV–27312011, 2011 WL 4711885, at *9.

B. Summary

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

III. CONCLUSION

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

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