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



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
LIN 08 154 52513

Office: NEBRASKA SERVICE CENTER

Date:

AUG 04 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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

On appeal, the petitioner argues that she meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's decision.

I. Law

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals

seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *See 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.*

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)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

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 reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on April 23, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a mathematician specializing in p-harmonic theory of geometry and analysis. 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 8 C.F.R. § 204.5(h)(3)(vi).

petitioner received her Ph.D. in Mathematics from the [REDACTED] in July 2006. Since August 2006, the petitioner has worked as a Visiting Assistant Professor in the Department of Mathematics at the [REDACTED]. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

The petitioner submitted documentation from the [REDACTED] indicating that she received a [REDACTED] Scholarship in the amount of \$400 in 2002 and \$500 in 2003. The petitioner also submitted a certificate from the [REDACTED] stating that she received a "2003-2004 [REDACTED] In Recognition of Scholarly Achievement." On appeal, the petitioner submits a letter from [REDACTED] stating that the [REDACTED] Graduate Scholarship requires "scholastic achievement with a minimum 3.5 GPA" and is available to "graduate students in the math department." [REDACTED] letter further states that the "[REDACTED] Fellowship is a one-year, non-renewable award presented by the [REDACTED] . . . in recognition of a student's scholarly achievement. . . . Usually there are 20 recipients of the recognition of scholarly achievement fellowship." The preceding scholarship and fellowship equate to institutional recognition and tuition funding for [REDACTED] graduate students rather than nationally or internationally recognized prizes or awards for excellence in the field of mathematics. Moreover, graduate study is not a field of endeavor, but training for a future field of endeavor. Accordingly, the petitioner's receipt of tuition for her graduate studies cannot be considered prizes or awards for excellence in the field of endeavor. Furthermore, there is no documentary evidence demonstrating that the petitioner's scholarship and fellowship are recognized beyond the presenting organization and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted citation evidence showing less than a dozen cites to her published articles as of the petition's filing date. Regarding the mathematical articles that merely reference the petitioner's published work, we note that the plain language of this regulatory criterion requires that the published material be "about the alien." In this case, the articles citing to the petitioner's work are primarily about the authors' work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that the articles citing to the petitioner's work similarly referenced numerous other authors. The submitted citations to the petitioner's work do not discuss the merits of her work, her standing in the field, any significant impact that her work has had on the field, or any other aspects of her work so as to be considered published material about the petitioner as required by this criterion. Instead, these citations are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there. Accordingly, the petitioner has not established that she meets this criterion.

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

The petitioner submitted several letters of support discussing her research under the guidance of her teacher [REDACTED] at the [REDACTED] (where she earned her Master's degree) and her Ph.D. supervisor, [REDACTED], Professor of Mathematics at the [REDACTED]. [REDACTED] states:

[The petitioner] was under my supervision during her years at the [REDACTED] .. She found examples of nontrivial bi-harmonic maps in spheres. She proved to me the way to verify the stability of bi-harmonic-maps by applying variation methods. Examples and counter examples are crucial and substantial in theoretical mathematics.

[The petitioner] impressed me on numerous occasions. One in particular was her finding of how to estimate the "Second Fundamental Forms" on ellipsoids embedded in Euclidean spaces. Her research work on the generalization of p-harmonic theory from spheres to ellipsoids had motivated us to work on compact convex hyper-surfaces in a broad range instead of concrete ellipsoids. This is a substantial break-through in the mathematics.

Her high level skill in solving difficult problems is also reflected in her paper joint with me and [REDACTED] [REDACTED]. In this paper, we first introduced the concepts of "p-balanced or p-imbalanced growth" to deal with growth estimation in

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

Riemannian manifolds which recapture all of previous research work under the moderate growth or finite-energy growth. We also made an important contribution to provide some partial answers to the famous open questions such as Chen Conjecture on Bi-harmonic Immersions; Generalized Bernstein Problems; Generalized Cheng-Yau Estimates.”

Dr. Kyung-Bai Lee, Professor of Mathematics at the University of Oklahoma, states:

I have known [the petitioner] academically since 2000. She took several graduate courses on Topology in my classes while she was completing her Ph.D. program.

* * *

One of [the petitioner’s] published papers is [redacted]” In this paper, [the petitioner] and [redacted] successfully found p-harmonic maps to represent homotopy groups. Furthermore, she and [redacted] used p-harmonic maps as catalysts to link topological properties and geometric properties in Riemannian manifolds. This ground-breaking finding leads to many important theorems, such as Sphere Theorem, Density Theorem, Homotopical Vanishing Theorem and Liouville-type Theorem and many others.

* * *

[The petitioner]’s knowledge in mathematics is reflected in numerous published papers. For example, in the paper [redacted]” [the petitioner] and her co-authors provided a new and revolutionary perspective in approaching geometric problems regarding high-dimensional Riemannian manifolds by applying p-harmonic theory.

For example, the most significant work in this paper:

- [The petitioner] and her co-authors, for the first time in mathematics, introduced the concepts of “p-balanced growth” and “p-imbalanced growth” in growth estimation theory to unify a variety of previous results in growth estimation theory and to extend the scope of previous results in L^p or L^q version credited to famous mathematicians [redacted]
- [The petitioner] and her co-authors refined and generalized [redacted] and derived a “ [redacted] ” with positive feedback from the distinguished mathematician [redacted] Field Medal’s winner.
- [The petitioner] and her coauthors provided some partial answers to the famous open questions such as [redacted] under p-parabolicity condition and [redacted] on biharmonic immersions.

The paper on convex functions showed that convexity plays an important role in different areas of mathematics, such as in partial differential equations, calculus of variations, p-

harmonic theory and others. In this paper, [the petitioner] and her co-authors described exactly the link between convexity and sub-solutions of p-Laplace equations.

The paper published in 2000 was also about the solutions of p-Laplace equations. The p-Laplace equations have strong physical background. For instance, solutions of p-Laplace equations are motivated by the search of certain kinds of solitary waves in non-linear equations of the Klein-Gordon or Schrodinger type. In this paper, [the petitioner] and her co-authors showed the way of how to successfully find a solution.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or graduate 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.

[redacted], states:

I have met [the petitioner] only once, in an analysis conference in Iowa. Thus I am able only to describe my impression on her mathematics. However, I know well her teacher [redacted], who is an excellent mathematician in China.

* * *

Let me highlight a couple of results of [the petitioner]. In a joint paper with [redacted] she was able to generalize the use of fundamental mountain pass theorem in a surprising way, among other things, by applying the Ekeland variational principle. This is a surprising and beautiful result. In another paper she is able to generalize the method of Bochner to prove Liouville type of theorems in great generality in Riemannian manifolds. This even has something new to say on the well-known Chen Conjecture.

In addition, her other papers also contain nice results and show great expertise on partial differential equations and geometry. I was very impressed by the variety of topics her publications cover, although the total number of publications is (not yet) very large.

[redacted] states:

I went to [redacted] to give seminars and colloquia at University of Oklahoma when [the petitioner] was a graduate student there. With many interactions with her advisor [redacted], I knew [the petitioner's] work and her progress in graduate study.

Her work on Homotopy Groups and p-Harmonic Maps stands for a special interest in geometry. In this paper, her advisor and she used the p-harmonic maps to represent

homotopy classes, via the minimal submanifolds in spheres to minimal varieties of convex hypersurfaces. This work is related to both subjects in geometry, topology and analysis. This is extended further by her paper p-Harmonic estimates and generalizations of the uniformization theorem and Bochner's method with geometric applications with [REDACTED] and [REDACTED]. This work adapted global analysis on iterative iterative method, maximum principle for p-harmonic maps to obtain a generalized Bochner's result from low-dimensional compact manifolds to high-dimensional noncompact manifolds. This excellent work leads to solve an open problem under p-parabolic assumption and Chen conjecture on biharmonic immersions. Both papers are published in the Proceedings of [REDACTED] Midwest Geometry Conference.

* * *

[The petitioner's] works in the p-Harmonic theory brought some new and challenging ideas on various differential geometric situations. Her contributions are (1) a C^2 convex function which is a submersion on a Riemannian manifold is a p-subharmonic function for every $p \geq 1$ (this result is sharp); (2) representing the homotopy classes by p-Harmonic maps leads to Sphere theorem, Density theorem, Topological Vanishing theorem (this result is interesting in topology and geometry); (3) a generalized uniformization theorem in terms of p-parabolic or p-hyperbolic (this result makes possible to extend earlier famous work by Klein, Koebe and Poincare to high-dimensional complete noncompact Riemannian manifolds.

[REDACTED] Professor of Mathematics and Director of Graduate Studies, Department of Mathematics, [REDACTED] states:

I became acquainted with [the petitioner] last year when she joined my department as a visiting assistant professor.

* * *

Her work consists of a very pleasing blend of geometry and analysis. Her first paper involves some Sobolev space theory that has to be modified because the spaces concerned are not compact. The other papers concern p-Laplacian theory and address such questions as the relation of p-harmonic maps to representations of homotopy groups, p-generalizations of Bochner's theory to the non-existence of p-harmonic forms, and p-harmonic maps on ellipsoids. Some of this work has been done by the famous Field's medal (equivalent to a Nobel Prize in Mathematics) winning mathematician [REDACTED] and the generalizations obtained by [the petitioner] and her colleagues represents a considerable achievement.

[REDACTED] opines that the petitioner and her colleagues' work "represents a considerable achievement," but the record lacks evidence of numerous independent cites to their work to support his opinion. In response to the director's request for evidence, the petitioner submitted citation evidence showing that her body of work has been cited to eleven times as of the petition's filing date. We cannot ignore, however, that nine of the submitted citations were self-citations by [REDACTED]

and the petitioner. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. In this instance, the limited number of independent cites to the petitioner's body of work as of the petition's filing date is not an indication that her mathematical findings equate to original contributions of major significance in the field.

Professor of Mathematics, states:

In her dissertation as well as her later papers, [the petitioner] has proven a number of significant theorems using p-harmonic maps.

* * *

She has written several joint papers with leading scholars and there is no doubt that she will have a very successful career in mathematics.

* * *

Even [the petitioner's] first paper published while she was still studying in China is quite interesting. Here one wishes to find positive solutions on R^n of a semi-linear PDE of p-Laplacian type with the solution having a specified behavior at infinity. This is a problem which can be described in a variational format. . . . [The petitioner] and her co-authors were able to find a new approach to obtain success.

* * *

[The petitioner] is a young mathematician whose Ph.D. advisor, is a leading expert in the field. [The petitioner] has collaborated with him on several papers and also with other experts.

With regard to the petitioner's work as discussed by and others, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. 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. We will fully address the petitioner's scholarly articles under the next criterion.

Professor of Applied Mathematics, states:

I have known [the petitioner] for a period of one year since she took a visiting lecturer position here from the Her area of research is p-Laplace Theory, a

part of Geometry and Analysis, and she has co-authored eight papers in this since receiving her Ph.D. in 2006. She seems to have a good grasp of this area of research and I would expect her to continue to contribute new results.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner performed admirably on the work to which she was assigned, the submitted documentation does not establish that her findings equate to original contributions of "major significance" in her field. For example, the record does not indicate the extent to which her work has impacted others in her field nationally or internationally, nor does it show that the field has significantly changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this regulatory criterion. 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 (Commr. 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 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a mathematics researcher who has made original contributions of major significance. Without evidence showing that the petitioner's work equates to original contributions of major significance in her field, we cannot conclude that she meets 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 petitioner has documented her authorship of scholarly articles in professional journals and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner submitted letters of support discussing her work at the Wuhan Institute of Physics and Mathematics, the [REDACTED]. There is no supporting evidence showing that these institutions have a distinguished reputation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, while the petitioner has performed admirably on the assignments delegated to her, there is no evidence showing that her

roles were leading or critical for the preceding institutions. For example, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the general hierarchy of her universities. We note that the petitioner's role at the [REDACTED] and the [REDACTED] was that of a graduate student. Moreover, the petitioner's evidence does not demonstrate how her temporary Visiting Assistant Professorship at the [REDACTED] differentiates her from the other teachers and researchers employed by the university, let alone its tenured faculty members and department chairs. The documentation submitted by the petitioner does not establish that she was responsible for the preceding institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a February 21, 2007 letter from the [REDACTED] offering her "a salary of \$36,000 for the 2007 - 2008 academic year." The plain language of this regulatory criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her earnings are significantly high in relation to others in the field. Accordingly, the petitioner has not established that she meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct 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," 8 C.F.R. § 204.5(h)(2); 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (viii), and (ix).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(vi), the petitioner has not established that her co-authorship of four published articles with her supervisors as of the petitioner's filing date demonstrates a level of expertise indicating that she is among that small percentage who

have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to mathematical research in a university setting, we will evaluate a citation history or other evidence of the influence of the petitioner's articles to determine the impact and recognition her work has had on the field and whether such influence has been sustained.⁴ For example, numerous independent cites to an article authored by the petitioner would provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. On the other hand, few or no cites to an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. As previously discussed, the petitioner submitted evidence showing that her body of work has been cited less than a dozen times as of the petition's filing date. Moreover, the majority of the submitted citations are self-citations by [REDACTED]. In this case, the citation history submitted by the petitioner is not sufficient to demonstrate that her articles have attracted a level of interest in her field commensurate with sustained national or international acclaim at the very top of the field. Furthermore, when discussing the petitioner's publication record, [REDACTED] specifically states that "the total number of publications is (not yet) very large." In contrast to the petitioner's limited record of publication at the time of filing, [REDACTED] resume reflects that he has authored more than thirty mathematical journal publications and [REDACTED] resume indicates that he has more than sixty publications to his credit.

The petitioner's evidence included documentation showing that her work was accepted for presentation at conferences such as the Midwest Geometry Conference and the Annual Meeting of the Mathematical Association of America. The record, however, does not establish that participation in such mathematic conferences is commensurate with sustained national or international acclaim at the very top of her field. In the fields of science and mathematics, acclaim is generally not established by the mere act of presenting one's work at a conference or an annual meeting along with numerous other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at venues where her work appeared was a privilege extended to only a few top mathematics researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in her field at the national or international level.

⁴ The Department of Labor's Occupational Outlook Handbook 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/ocooce/096.htm>, accessed on July 16, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS' position that publication of scholarly articles is not automatically evidence of sustained national or international acclaim; we must consider the field's reaction to those articles.

On appeal, the petitioner submits a March 17, 2009 notification inviting her to participate in the 2009 Program for Women and Mathematics at the [REDACTED] New Jersey. The petitioner's invitation and participation in this program post-date the petition's April 23, 2008 filing date. A petitioner, however, must establish eligibility as of the date of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner is a Visiting Assistant Professor at the [REDACTED] whose position equates to a non-tenure track, temporary appointment. The petitioner relies primarily on the articles she coauthored with her superiors [REDACTED] eleven submitted cites to her work as of the petition's filing date (nine of the eleven citations are those in which [REDACTED] cites to his own work), the praise of members of her field, and her conference presentations.

As noted by counsel, many of the petitioner's references' credentials are impressive. For example, [REDACTED] is a Professor of Mathematics, the organizer of "national and international mathematical conferences," Chief Editor of the *Tamkang Journal of Mathematics*, and the author of 60 research articles.

[REDACTED] states:

Currently, I am a full professor of Mathematics at the [REDACTED]. . . . I am an editor of the *Journal of Korean Mathematical Society* and the *Kyungpook Mathematics Journal*. The Journal of Korean Mathematical Society is highly recognized and respected in the Science Citation Index. . . . I have written over 50 papers.

[REDACTED] states: "I am currently a full professor of mathematics, working at University of Helsinki, Department of Mathematics and Statistics, [REDACTED]" Further, according to the resume accompanying his letter, [REDACTED] has authored more than thirty mathematical journal publications.

[REDACTED] is "a [REDACTED] Professor of Mathematics and Southwestern Bell Professor at [REDACTED] and has authored 25 publications.

[REDACTED] is a "Distinguished Professor" of Mathematics at the [REDACTED] and the author of more than thirty publications.

[REDACTED] is a Professor of Mathematics and the [REDACTED] of Graduate Studies at the [REDACTED]. His letter states:

I have authored or co-authored 44 articles which have been published in international peer-reviewed journals. I have delivered invited addresses in many locations . . . throughout the world. I have had extensive international collaborations with investigators at other

institutions in England, Belgium, Hungary and Australia. I was also successful in obtaining a NATO grant that included colleagues from England, Belgium and Spain. I have also acted as a referee on more than 30 articles that were submitted for publication. Since 2001 I have given invited addresses in Opava (Czech Republic), Levico (Italy), Gent (Belgium), Bedlewo (Poland), Melbourne (Australia), Boulder, Columbus and Brock University (Canada). During the same time I have had five doctoral students who have completed their dissertations

all of whom secured tenure-track positions.

While the petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought, it appears that the very top of her field of endeavor is far above the level she has attained. In this case, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim in mathematics, or being among that small percentage at the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soitane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.