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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  
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Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date:

**NOV 01 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on August 17, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a plastic surgeon specializing in wound care. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## **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. 723 101<sup>st</sup> 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 the petitioner demonstrate his or her 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 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. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

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.

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 (9<sup>th</sup> 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).

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

## II. Analysis

### A. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the submission of eight recommendation letters and various speaking engagements at approximately sixteen seminars and conferences. In response to the director's request for evidence, the petitioner submitted an additional seven recommendation letters, as well as documentary evidence reflecting an additional sixteen lectures and speaking engagements. In the director's decision, he found that the petitioner's publications were "cited by others approximately 102 times" and ultimately concluded that the documentary evidence submitted by the petitioner "failed to establish that [the petitioner's] work has influenced, or been recognized by, others in his field to such a degree that it could be considered contributions of major significance."

On appeal, counsel argues:

[T]he Director did not apply the correct regulatory standard. [The petitioner] was required to present evidence of his "original scientific, scholarly, artistic, athletic, or business related contributions" of major significance in his field. 8 C.F.R. § 204.5(h)(3)(v) (emphasis added). The requirement is clearly in the disjunctive, but the Director approached [the petitioner's] evidence solely from the point of view of what was "scholarly," focusing on how often [the petitioner's] articles in his field have been cited.

\* \* \*

In focusing solely on the scholarly, the Director ignored evidence from [the petitioner] of his major scientific contributions for the treatment of hard-to-heal wounds. . . . [The petitioner] submitted testimony from leading medical authorities in Israel and industry experts on his pioneering role in the introduction and use of such techniques as ozone and oxygen, vacuum assisted closure, activated macrophages, "Lifewave" technology, low energy laser, ultrasound, and advanced dressings.

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

[I]n light of the nature of [the petitioner's] accomplishments and the nature of his occupation as a clinician rather than a researcher, the best evidence of those accomplishments and that acclaim was the testimony [the petitioner] presented of experts familiar with his work.

While we agree with counsel that the petitioner's field is more scientific rather than scholarly, we find that the director's evaluation of the petitioner's citation history is appropriate in determining that the petitioner's work has been "of major significance in the field." As counsel has emphasized the petitioner's recommendation letters on appeal, we will first address the recommendation letters and then evaluate the petitioner's citation history and conference and seminar presentations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scientific-related "contributions of major significance in the field."

In this case, while the recommendation letters praise the petitioner for his work in wound care, they fail to indicate that he has made original contributions of major significance in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For example:

██████████, Surgeon General of the Israel Defense Force (IDF), stated:

[I]n addition to his service as an airborne physician, [the petitioner] has been caring for IDF soldiers within his civilian occupation as a specialist in plastic surgery and as a leader in the field of wound healing. [The petitioner] has cared for IDF casualties who were injured in the war in Lebanon last year and who were transferred to Sheba Medical Center [SMC] for further care. [The petitioner] also advises the Medical Corps on the care of casualties with difficult to heal wounds.

While ██████████ briefly described the petitioner as a leader in wound healing, he failed to indicate any contributions that were both original and of major significance to the field as a whole. ██████████ failed to provide any evidence demonstrating that the petitioner's work has significantly impacted the field beyond the limited number of patients he has treated.

██████████, Director of Sheba General Hospital, stated:

[The petitioner] was one of the first physicians in Israel to use the KCI Vacuum Assisted Closure (VAC) device to treat acute and chronic wounds.

Activated Macrophages are living human cells that were activated in the laboratory and injected into the wound surface. It's a very unique technology that was developed at the central MDA Israeli Blood bank research unit and has a powerful effect on wound healing. [The petitioner] is involved in ongoing clinical studies on the effects [of] this technology and is making a major contribution in its utilization.

\* \* \*

"Lifewave" is another high-tech technology that issues an electrical current to the edges of chronic wounds. Our wound care center has a few of these devices. [The petitioner] has also made a major contribution in the development of this technology.

Polyheal is a solution made of microscopic latex beads in a nutrient base. It is used as a powerful granulation tissue simulator intended for use on complicated wounds with exposed bone or tendon. [The petitioner] has the most extensive experience in the world with this technology and runs a multi-centered, randomized double blind clinical study to explore its efficacy.

Other advanced technologies that are being employed by [the petitioner] are low energy laser, ultrasound assisted venous sclerosation and high focused ultrasound pulsation for arterial insufficiency.

Although [redacted] described several technologies that the petitioner utilizes, they fail to reflect *original* contributions made by the petitioner. We are not persuaded that being an expert with a specific technology also demonstrates an original contribution. In fact, [redacted] stated that activated macrophages were "developed at the central MDA Israeli Blood bank research unit" and not by the petitioner so as to establish an original contribution. Furthermore, while [redacted] indicated that the petitioner has made major contributions, he failed to identify those contributions. Instead, [redacted] indicated that the petitioner was involved with "ongoing clinical studies" without evidence establishing that his clinical studies have been of major significance to the field.

[redacted]  
Medical Center (SMC) in Israel, stated:

[The petitioner] pioneered the reconstruction of a multidisciplinary wound care center in Israel and currently he serves as the head of this service at the Sheba Medical Center. [The petitioner's] service has the annual capacity of treating 2000 outpatient cases every a [*sic*] year and performing over 200 cases of major flap surgeries annually. The wound care service introduces advanced conservative procedures such as VAC systems, modern wound care applications

among which [the petitioner] has introduced and established the unique macrophage treatment for chronic wound closure. Macrophage – cellular therapy for chronic wounds is a world [*sic*] novel scientifically proved method for the harvesting and using self and donor macrophages for treating refractory chronic wounds.

██████████ stated that the petitioner "introduced and established the unique macrophage treatment for chronic wound closure." However, ██████████ did not indicate that the petitioner created or developed the macrophage treatment; only that the petitioner introduced and established it at the SMC. We are not persuaded that merely introducing a treatment that was developed by someone else can be considered an original contribution. Even if the petitioner developed the macrophage treatment, ██████████ failed to indicate that the treatment is utilized throughout the field and not limited to the SMC.

██████████ Specialist, stated:

I know [the petitioner] from our joined work at [SMC]. Together we established an educational program in the hospital to prevent pressure sores and educate the staff in treating chronic wounds. [The petitioner] is a very popular and talented lecturer in wound care.

While ██████████ stated that the petitioner established an educational program at SMC, ██████████ failed to not only describe the significance of the educational program to the field as a whole but also failed to indicate the impact of the program within SMC.

██████████, stated:

Many dozens of our veterans owe their well being to [the petitioner] and his personal skills, his knowledge of when to operate or wait and treat the wound conservatively until it heals and they are able to return to their routine. I am following his work very closely and I see him bringing new techniques and new ideas. [The petitioner] gained a lot of experience in treating pressure sores with activated macrophages, a technology that exists only in Israel. [The petitioner] investigates and populates technologies like electrical stimulation, vacuum assisted closure device and local ozone therapy. [The petitioner] developed a treatment regimen for paraplegic patients with pressure sores that involves local wound care, patient education, pressure sore prevention, nutritional support and criteria for surgical intervention. [The petitioner's] special surgical approach has high success rate and low recurrence rate.

Although ██████████ indicated that the petitioner developed a treatment regimen, he failed to specifically identify the treatment regimen and only generally stated that it involved wound care, patient education, pressure sore prevention, nutritional support, and surgical intervention criteria. Regardless, ██████████ failed to indicate that this unnamed treatment regimen has been of major

significance to the field such as evidence demonstrating that other wound care hospitals have changed their wound care to paraplegic patients based on the petitioner's treatment regimen.

█ - Israel, stated:

It is clear that in light of [the petitioner's] experience in the area of wound care, his wide knowledge of the subject, his presentation skills and his fluent English are all factors that contribute to [the petitioner] being a [*sic*] an important and dominant partner for our wound care activities in Israel and around the world.

While █ recognized the petitioner's experience and knowledge in wound care, she failed to identify any original contributions made by the petitioner. Simply participating in lectures or studies is insufficient to establish eligibility for this criterion without evidence demonstrating that the petitioner has made original contributions of major significance to the field of medicine.

█ stated:

[The petitioner] has done extensive research using Negative Pressure as adjunctive therapy in delicate plastic surgical techniques which have been invaluable in reducing costs and improving the outcomes. With the elevation of considerations of patient "pain" now in the forefront of treatment, his knowledge and participation in research trials including the innovative Biatain Ibu™ dressing for pain reduction in chronic wounds will be invaluable in adding to our current knowledge of techniques to improve our pain control as we promote wound healing. With the dramatic increase in diabetic related wounds here in the U.S. newer and novel techniques for treatment will be needed. [The petitioner] has been involved in testing activated macrophage injection research regarding these problems, a novel consideration which appears to have great potential especially in advanced wounds such as those with exposed bone and tendon which have the highest propensity to be high cost, and have the poorest outcomes. There is no question that a health care professional of his training, education and caliber will provide innovative, cost effective, quality wound care to the people and health care system here in the United States.

Although █ mentioned that the petitioner's research regarding Negative Pressure has reduced costs and improved outcomes, he failed to describe how the petitioner's research has reduced costs or improved outcomes. We cannot make a favorable finding for this criterion based on general or broad statements. Furthermore, █ indicated that the petitioner's research "*will be invaluable (emphasis added),*" "*[has] great potential (emphasis added),*" and "*will provide innovative, cost effective, quality wound care (emphasis added).*" Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175

(Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's work is likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While [REDACTED] praises the petitioner, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

[REDACTED], Adjunct Associate Professor at the University of Medicine and Dentistry of New Jersey, stated:

After careful consideration of [the petitioner's] qualifications as a plastic surgeon who understands and implements evidence-based wound care in his practice, he was invited to join our team. Despite a busy career and a young family, [the petitioner] joined the AAWC Guideline Department in January 2009, and has actively donated his time and energy to its pressure ulcer guideline project. His extensive knowledge and surgical expertise have contributed importantly to the success of this project, which will result this year in a comprehensive evidence-based, content-validated pressure ulcer guideline with the potential to improve consistency and quality of pressure ulcer management throughout the United States and around the world.

The petition was filed on November 28, 2008, and [REDACTED] refers to the petitioner's joining of the AAWC Guideline Department in January 2009. We cannot consider events occurring after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, similar to [REDACTED] [REDACTED] described the petitioner's work in terms of future probability such as "will result this year" and "the potential to improve."

[REDACTED] stated:

[The petitioner] is one of only two physicians world-wide that has taken the initiative to integrate the [FMC] dressings into his daily practice, explore the wide range of benefits his patients could achieve through the use of dressings and present his results at national and international wound care meetings. [The petitioner], on his own initiative and without any support from [FMC], has presented his extensive clinical results at wound care society meetings for the purpose of educating the larger medical community about how to improve the care of their patients through the use of [FMC] wound dressings. One of the

important results of his research has been how to improve the care of skin graft donor sites through the use of [FMC] wound dressings.

We are not persuaded that the letter from [REDACTED] demonstrates any original contributions made by the petitioner to the field. In fact, [REDACTED] mentions the original contributions of FMC. While [REDACTED] stated that the petitioner is one of only two physicians to incorporate the FMC dressings into his daily practice, this is not reflective of an original contribution by the petitioner. Furthermore, even if we found that this was an original contribution, which we do not, [REDACTED] failed to elaborate on the impact or influence of the FMC dressings to the field as a whole and not limited to the petitioner and another physician. We are not persuaded that only two physicians are integrating the FMC dressings demonstrates that it has been of major significance to the field.

We note here that [REDACTED] submitted a second recommendation letter in response to the director's request for evidence. While [REDACTED] reiterates his praise for the petitioner, [REDACTED] also refers to the 8<sup>th</sup> Annual American Professional Wound Care Association from April 2 – 5, 2009, in Philadelphia, PA where the petitioner made presentations on managing skin graft donor sites and managing painful sebaceous and pilonidal cysts. However, the conference occurred after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Nonetheless, [REDACTED] failed to demonstrate how the petitioner's presentations have significantly impacted the field.

[REDACTED] stated:

In the clinic setting, I have a 19 year old male with a severe case of rare condition Epidermolysis Bulosa. While under my care, a number of co-morbid conditions not addressed by his previous pediatrician have been identified and treated yielding in improved quality of life. His chronic wounds are unique to his disease. The severity and chronicity of these wounds are painful, debilitating and ultimately fatal for the victims. [The petitioner] has had expertise with these patients before and has been successful in healing wounds that have plagued this patient for years. To be more specific, [the petitioner] has worked with me to heal wounds and improve quality of life for a patient who had been literally ignored to die by other primary care physicians and specialist in this community.

Again, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires the petitioner to demonstrate his original contributions of major significance "in the field." In this case, [REDACTED] credits the petitioner with assisting him in healing the wounds of a single patient. While the petitioner's treatment of the patient is admirable, we are not persuaded that the treatment of a single patient

demonstrates that the petitioner has made original contributions of major significance to the field as a whole and not limited to a single patient.

stated:

[The petitioner's] services at Susan B. Allen Memorial Hospital will significantly contribute to the provision of emerging treatments for a variety of reconstructive plastic surgery and wound care. The necessity of wound care treatments, including surgical procedures, continues to grow as a result of the prevalence of diabetes in our population. We are pleased to have the expertise of [the petitioner] as he joins our Medical Staff as our wound care specialist. [The petitioner's] services will greatly enhance the health of the people we serve.

failed to provide any evidence of the petitioner's past or current original contributions. In fact, described the petitioner's contributions based on possible or potential contributions such as "will significantly contribute (emphasis added)" and "will greatly enhance the health of the people (emphasis added)." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Notwithstanding, mentioned the petitioner's impact upon the people served at the Susan B. Allen Memorial Hospital and not the petitioner's contributions to the medical field as a whole.

stated:

[The petitioner] was a pioneer in the field of wound healing [*sic*] in our medical center and in Israel. He is the founder and the chairman (before he moved to the US). [The petitioner] made major contributions to the Wound Care field in Israel. He was heavily involved with research and development of new technologies and was the only plastic surgeon in Israel who had a surgery unit dedicated to wound care. The establishment of together with the first national in March 2008 (both led by [the petitioner]) were major breakthrough[s] in this field. [The petitioner] had crucial rule [*sic*] in developing new technologies like activated macrophage injection, PolyHeal microspheres, Lifewave BST device, FlowAid device and Ozone wound care technology.

Although stated that the petitioner made major contributions to wound care, he referred to the contributions in broad terms such as "heavily involved in research" without identifying the significant impact of the research. In addition, while stated that

IWHS and WCC were major breakthroughs in wound care, he failed to explain how they were breakthroughs within the meaning of major significance to the field of medicine. Likewise, while [REDACTED] indicated that the petitioner had a crucial role in developing new technologies and provided examples of the technologies, he failed to define those crucial roles. [REDACTED] failed to establish, for example, that any of the new technologies were developed by the petitioner so as to establish that they were the petitioner's original contributions of major significance to the field.

[REDACTED], stated:

Due to [the petitioner's] very unique skills we chose him to be a consultant to our company, PolyHeal and later he became the chief medical advisor for our multi-centered double blind clinical study. Treating hundreds of patients with our product, [the petitioner] has the largest experience in the world with PolyHeal microspheres. He had the crucial role in finding the current clinical indications for the product.

[REDACTED] also indicated that the petitioner used to be a medical consultant for the following companies:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

In addition, [REDACTED] indicated that the petitioner "was heavily involved with international wound care companies experiencing new products before they were introduced":

- A. [REDACTED]
- B. [REDACTED]
- C. [REDACTED]
- D. [REDACTED]

We are not persuaded that the letter from [REDACTED] reflects any original contributions made by the petitioner. While the petitioner may have acted as a medical consultant for companies that develop wound care products, [REDACTED] failed to demonstrate that the petitioner was responsible or credited with developing or creating any of the wound care products so as to establish that they are original contributions. While the petitioner may have treated patients using these products, the record falls far short in considering these products as the petitioner's original contributions of major significance to the field.

Finally, [REDACTED] stated:

[The petitioner] has the most extensive clinical experience in our technology and was using it heavily at his wound care clinics at [SMC] and Bnei Brak. He had a crucial role [sic] in developing and directing the clinical research. He was also involved in development of different indications for our technology like deep vein thrombosis (DVT) prophylaxis and reversing sensory neuropathy. These two indications are revolutionary [sic] breakthrough in medicine. Peripheral neuropathy is a devastating nerve injury causing severe ulcers and pain especially in diabetic patients. DVT is one of the leading causes of sudden death.

Similar to [REDACTED] letter, [REDACTED] broadly described the petitioner's contributions in terms of "developing and directing the clinical research" and "involved in development of different indications for our technology." However, [REDACTED] failed to describe the clinical research developed by the petitioner or specifically indicated the "different indications." Moreover, the letter reflects that EBMDL created the technology of "a small electro-muscular stimulator that activates the calf muscles with 4 electrodes." While the petitioner was involved with the research, the record reflects that the original contribution was made by EBMDL, and there is insufficient documentary evidence demonstrating that this technology can be originally attributed to the petitioner. In addition, [REDACTED] failed to indicate in his letter the influence or impact of the technology on the field.

While those familiar with the petitioner's work generally describe it as "pioneering," "leading," and "innovative," the letters contain general statements that lack specific details to demonstrate that the petitioner's work is both original and of major significance. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>3</sup> The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Moreover, as indicated above, some of the recommendation letters gave descriptions in terms of future applicability and determinations that may occur at a later date. It appears that the petitioner's work is still ongoing and that the findings he has made are not currently being implemented in his field. The letters do not indicate that anyone is currently applying the petitioner's research findings so as to establish that these findings have already impacted the field in a significant manner. Accordingly, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing

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<sup>3</sup> *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); *Avyvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

*Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's work will likely be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's work as both innovative and of great potential interest, the fact remains that any major impact on the field of medicine that results from the petitioner's work will likely occur in the future.

USCIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' 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 of original contributions of major significance.

Regarding the petitioner's citations, we reiterate that the petitioner never claimed eligibility for this criterion based on the citation of his work by others. Instead, the petitioner submitted documentary evidence regarding his citations in order to establish eligibility under the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). We find that it is appropriate to evaluate and discuss the petitioner's citations under the original contributions criterion. While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field*. In this case, the petitioner submitted documentary evidence from [www.scopus.com](http://www.scopus.com) reflecting that his work has been cited 103 times. Specifically, the record reflects the following citations:

1. "Tumor Prostaglandin Levels Correlate with Edema Around Supratentorial Meningitis" – 32 citations;
2. "Dermatobia Hominis Mylasis Among Travelers Returning from South America" – 15 citations;<sup>4</sup>
3. "Treatment of Rhinophyma with ER:YAG Laser" – 9 citations;
4. "Positive Changes in Sun-Related Behavior in Israel (1994 – 1998)" – 9 citations;
5. "Total Lower Lip Reconstruction with Innervated Muscle-Bearing Flaps: A Modification of the Webster Flap" – 9 citations;

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<sup>4</sup> We note that the petitioner cited himself one time in the article, [REDACTED] in Travelers."

6. "Myiasis with Lund's Fly (*Cordylobia Rodhaini*) in Travelers" – 8 citations;
7. "Turnover Forehead Flap Combined with Composite Crus of Helix Graft for Partial Nasal Reconstruction" – 8 citations;<sup>5</sup>
8. "Breast Augmentation with Fresh-Frozen Homologous Fat Grafts" – 7 citations;
9. "The Versatility, of the Nasolabial Flap Enhanced by the Delay Procedure" – 2 citations;
10. "Silicone Breast Implants with Silicone Gel and Autoimmune Diseases – Are They Related?" – 2 citations;
11. "Necrotizing Periorbital Cellulitis Following Aesthetic Rhinoplasty" – 1 citation; and
12. "A Comparison Between CO2 Laser Surgery With and Without Late Ral Fold Vaporization for Ingrowing Toenails" – 1 citation.

We are not persuaded that the total number of 103 citations is reflective that the petitioner's work has been of major significance to the field. As indicated above, the petitioner's most cited article, item 1, has been cited 32 times, and the petitioner's second most cited article has been cited 15 times. Moreover, the remaining ten articles have been cited less than ten times, with four of those articles cited once or twice. The petitioner failed to demonstrate that his work has been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field of medicine. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of major significance in the field. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

Regarding the petitioner's seminars and lectures, the petitioner submitted documentary evidence reflecting that the petitioner participated in approximately 26 seminars, conferences, meetings, and lectures. We note that four of the events occurred after the filing of the petition:

1. [REDACTED] from April 2 – 5, 2009;
2. [REDACTED] from May 7 – 8, 2009;
3. [REDACTED] – Pressure Ulcer Collaborative Learning Session 3 – October 20, 2009; and
4. [REDACTED] – 36 Annual International VETTS Symposium for Vascular and Endovascular Issues, Techniques, and Horizons from November 18 – 22, 2009.

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<sup>5</sup> We noted that the petitioner cited himself one time in the article, [REDACTED] by the Delay Procedure."

Regardless, while the petitioner's presentations and lectures demonstrate that his work was shared with others and may be acknowledged as original contributions based on the selection of them to be presented, we are not persuaded that lecturing or presenting at various venues is sufficient evidence establishing that the petitioner's work is of major significance to the field as a whole and not limited to the engagements in which they were presented. The petitioner failed to establish, for example, that the presentations were of major significance so as to establish their impact or influence beyond the audience at the conferences.

Without additional, specific evidence showing that the petitioner's work has been unusually influential or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion. Even considering all of the petitioner's documentary evidence in the aggregate, the petitioner has failed to establish that he has made original contributions of major significance to the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, the petitioner failed to establish that he 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.*

Although the director found that the petitioner authored articles in scientific and medical journals, he found that the lack of extensive citations of the petitioner's work failed to establish sustained national or international acclaim. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on his positions with the SMC, IDF, and the Israeli Foreign Ministry (IFM). In the director's decision, he found that the petitioner failed to submit any documentary evidence regarding the distinguished reputation of SMC, and the petitioner failed to establish that he performed in a leading or critical role for IDF or IFM.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role

itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

Regarding SMC, the petitioner submitted sufficient documentary evidence on appeal establishing the distinguished reputation of SMC. Furthermore, a review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence demonstrating that he has performed in a leading or critical role for SMC.

Regarding IDF and IFM, counsel argues on appeal:

Only one other physician was sent on the medical aid missions for which MASHAV [Foreign Ministry's Center for International Cooperation] selected [the petitioner]. In each case, the pair was dispatched to a Third World country with a local health system overwhelmed by a disaster that brought widespread injury and death. . . . In short, these missions were decidedly not "normal" volunteer trips to provide routine vaccinations or elective surgeries. Each addressed a full-blown, time-critical medical crisis that demanded the best medical representation Israel could provide.

The record of proceeding reflects that the petitioner submitted the following documentation:

1. An article entitled, [REDACTED] Cameroon to aid the victims of a train collision;
2. An article entitled, [REDACTED] Cameroon Accident [REDACTED] g the train collision;
3. An article entitled, [REDACTED] from Hospital" reflecting an interview of the petitioner regarding the train collision;
4. A letter from the [REDACTED] Cameroon thanking the petitioner for assisting the victims in the train collision;
5. An article entitled, [REDACTED] reflecting that the petitioner was dispatched to Paraguay to aid victims of a supermarket fire;
6. An article entitled, [REDACTED] reflecting the supermarket fire;
7. An article entitled, [REDACTED] reflecting that IFM dispatched a medical assistance team to aid the victims of the supermarket fire; and
8. An article entitled, [REDACTED] reflecting that the petitioner assisted the victims of the supermarket fire.

We note that the petitioner submitted the previously mentioned and cited letter from [REDACTED] who indicated that the petitioner "has been caring for IDF soldiers" and "has cared for IDF casualties who were injured in the war in Lebanon."

Based on the submitted documentary evidence listed above, the petitioner demonstrated that he treated victims of a train wreck in Cameroon and a supermarket fire in Paraguay. While we admire the petitioner's humanitarian roles in these two disasters, the petitioner failed to establish that he has performed in a leading or critical role for IDF or IFM as a whole. We are not persuaded that being dispatched to two separate disasters to treat victims is demonstrative of a leading or critical role when compared to all of the responsibilities of IDF and IFM. For example, the petitioner submitted an article entitled, "MASHAV Publishes 2008 Annual Report" that reflects MASHAV's wide range of responsibilities from agriculture, water management, combating desertification, empowerment of women, entrepreneurs, health, education, computerization, community development, migration, and others. While the petitioner played a role in the routine duties of a surgical physician within IDF and IFM, the record falls far short in establishing that those roles were leading or critical consistent with the meaning of the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Although the petitioner established that he performed in a leading or critical role for SMC, the petitioner failed to meet the plain language of the regulation which requires leading or critical roles in more than one organization or establishment. In this case, the petitioner only established eligibility as it relates to one organization.

Accordingly, the petitioner failed to establish that he 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.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion by submitting the following documentation:

1. A letter from [REDACTED] and Pensions of the Israel Medical Association, who stated:

Regarding [the petitioner's] inquiry, we would like to inform [the petitioner] that according to the Ministry of Finance's 2006 report on work contracts and salaries, the fixed average physician salary is 9,923 New Israeli Shekels (NIS). Additionally, the average salary, inclusive of overtime and on-call shifts is 18,999 NIS.

2. A letter from [REDACTED], Certified Public Accountant, who stated:

[The petitioner's] average (last 6 months) monthly income from his public position is 18,300 NIS. His average monthly income from his private clinic is 120,850 NIS.

\* \* \*

According to this data [the petitioner's] average monthly total income (139,150 NIS) is 7.6 times more than the average income for a physician in Israel.

In the director's decision, he found that the petitioner's documentary evidence failed to establish eligibility for this criterion. On appeal, counsel argues:

In 2007, when Clalit, the largest of the HMO's . . . began an initiative to identify and pay higher salaries to a select number of outstanding physicians, Haaretz reported the salaries of doctors employed by Clalit as unit or department heads in the HMO's hospitals. . . . According to Haaretz, the compensation level at that time for such physicians was 20,000 to 24,000 NIS (New Israeli Shekels) per month. . . . The same story reported that the salary of the HMO's Chief Executive Officer was only 60,000 NIS per month. . . . These numbers are entirely consistent with the figure of 18,900 NIS per month provided by [the petitioner] . . . as the average income for an Israeli physician.

In support of the appeal, the petitioner submitted the following documentation:

- A. A screenshot from [REDACTED] of an article entitled, "Clalit the About";
- B. A screenshot from [REDACTED] of an article entitled, "Clalit to Quadruple 'Star' Doctors' Pay for Giving Up Private Practices"; and
- C. A document from the Finance Ministry State Revenue Administration.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." While [REDACTED] referred to statistics from "the Ministry of Finance's 2006 report on work contracts and salaries," the petitioner failed to submit documentary evidence from the Ministry of Finance in order to support the claims of [REDACTED]. Furthermore, [REDACTED] referred to the "average" salary of physicians. However, as the plain language of the regulation requires the petitioner to establish that his salary is high when compared to others in the field, average salary statistics do not meet this requirement.

Moreover, while the petitioner submitted a letter from his certified public accountant, we note that the petitioner failed to submit any supporting evidence such as his tax returns or pay stubs for his public position. Nevertheless, [REDACTED] indicated that the petitioner's average salary for six months was NIS 18,300, which is NIS 600 less than the average salary stated by [REDACTED]. [REDACTED] failed to specify if the average salary from the petitioner's public position included overtime or on-call. Furthermore, the screenshot from [REDACTED] reflects that "the average salaries of a unit or department head at one of the hospitals is in the neighborhood of NIS 20,000 – 24,000 a month." Notwithstanding that the article refers to the average salaries of a unit or department head, the petitioner's average salary for his public position is NIS 18,300, which is less than the average salaries in the article.

While [REDACTED] stated that the petitioner earned NIS 120,850 from his private clinic, the petitioner failed to offer any documentary evidence of salaries of physicians who operate private clinics. Again, as the petitioner failed to submit the documentation from the Finance of Ministry regarding the 2006 report on work contracts and salaries, we are unable to compare the petitioner's salary from his private clinic to others in his field.

We note, regarding item C, that counsel claimed that the document from the Finance Ministry State Revenue Administration reflected that "[t]he assessment is for [the petitioner's] private practice only, D.J.T. (Dorit [the petitioner's] spouse) Medicine." Notwithstanding that the document appears to reflect the revenue/loss of the clinic and not the salary of the petitioner, a review of the document reflects that the business lost NIS 382,976.

For the reasons stated above, the petitioner failed to establish that his salary is high in relation to others in the field.

Accordingly, the petitioner failed to establish that he meets this criterion.

#### ***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." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner established eligibility for one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, 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).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has demonstrated that he has authored some scholarly articles, garnered some attention from his colleagues, and performed in a leading or critical role for a single establishment. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The

petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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." 8 C.F.R. § 204.5(h)(2).

Moreover, while the petitioner demonstrated eligibility for the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the record reflects that the petitioner submitted evidence of having authored 14 scholarly articles. However, when compared to the authorship of those who submitted recommendation letters on the petitioner's behalf and those who cited the petitioner's work, the accomplishments of the petitioner are in stark contrast. For example:

1. ██████████ authored 56 peer-reviewed publications;
2. ██████████ authored 72 articles;
3. ██████████ authored 66 articles;
4. ██████████ authored 35 articles, three book chapters, and two books; and
5. ██████████ authored 82 articles.

Moreover, while the petitioner submitted evidence of moderate citation of his work by others, we are not persuaded that such a citation rate demonstrates the sustained national or international acclaim required for this highly restrictive classification. As authoring scholarly articles is inherent to scientific research, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by his work and are familiar with it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by others in his field. The petitioner submitted evidence showing that his body of work has been independently cited 103 times. As indicated previously, the petitioner's two most cited articles were cited 32 and 15 times each. While these citations demonstrate some interest in his published articles, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim. We note again that the majority of the articles authored by the petitioner were cited less than ten times, with four articles cited once or twice, and no evidence that two of the petitioner's articles were ever cited.

While the petitioner failed to establish eligibility under the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner submitted evidence reflecting eligibility as it pertained to one establishment, of which more than one is required. Even comparing the petitioner's role with SMC to the role of ██████████, who is the Director of

SMC, the petitioner falls far short in demonstrating that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). We note that although the petitioner claimed eligibility based on his routine duties as a physician with IDF, this is in stark contrast to the role of [REDACTED] who is the Surgeon General of the IDF.

Although the petitioner submitted recommendation letters praising the petitioner, such letters cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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.

We also cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). While the petitioner failed to establish eligibility under the salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner failed to submit extensive documentation of his eligibility for the criterion. Specifically, the petitioner failed to submit primary evidence of his salary as a physician in a public position and the salary earned based on his private clinic and not the revenue/loss of the clinic as a whole. Furthermore, the petitioner failed to submit sufficient documentary evidence demonstrating that his salary is high compared to others in his field.

The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated his "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 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.

### III. O-1 Nonimmigrant Admission

We note that the petitioner submitted documentary evidence reflecting that he was approved for at least two O-1 nonimmigrant visas. However, while USCIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the petitioner, the prior approvals do not preclude USCIS from denying a subsequently filed immigrant visa petition. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

#### **IV. Conclusion**

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

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

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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.