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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 07 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:

SELF-REPRESENTED

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on July 22, 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 in “foreign language education for the visually impaired through the use of assistive technology.” 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, the petitioner claims to meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). In addition, the petitioner argues:

The justification for the denial ignores the fact that there are very few teachers for visually impaired (TVIs) with a relevant doctoral degree. In Milwaukee Public Schools, I am the only TVI with a doctoral degree. To the best of my knowledge I am also the only one in the state of Wisconsin. There is a great shortage of professionals with qualifications.

The petitioner failed to submit any documentary evidence supporting any of his assertions. 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)). Moreover, the regulation at 8 C.F.R. § 204.5(h)(2) states that “[e]xtraordinary ability means 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.” Even if we would accept the petitioner’s assertions that there is a lack of teachers for the visually impaired or that the petitioner is the only visually impaired teacher with a doctoral degree in the Milwaukee Public Schools or in Wisconsin, which we do not, such factors are not relevant to establish the petitioner’s eligibility for this classification. The issue of whether similarly trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm. 1998). Instead, the petitioner must demonstrate that he “is one of

that small percentage who have risen to the very top of the field of endeavor.” In other words, the petitioner must establish that he is one of the top teachers of the visually impaired as whole and not limited to the restricted area of the Milwaukee Public School System or the state of Wisconsin. While the petitioner’s possession of a doctoral degree is relevant to his qualifications as a visually impaired teacher, we are not persuaded that the petitioner’s educational experience establishes that he “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).

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 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.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.*

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).

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 (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. Translations

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted numerous non-certified English language translations and foreign language documents without any English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

III. Analysis

A. Evidentiary Criteria

This petition, filed on July 23, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a visually impaired teacher. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion by stating:

[The petitioner's] original contributions to the field of assistive technology for the visually impaired is that he has developed ways to make technology help these students not only academically, but socially as well. [The petitioner's] work demonstrates that because body language and facial expressions play such an important part in communication blind students are at a disadvantage in communicating and thus in forming social relationships. In response to this he has used technologies such as emoticons to help these learners. Emoticons are computer icons which show feelings, such as smiley faces. They can be used in computer conversations to replace body language. By having both blind and sighted students conduct computer conversations using such emoticons blind students are put on an equal playing field with sighted students.

Much of [the petitioner's] work is geared toward inclusion of blind students through technology which uses other senses, such as touch and hearing. For example he has used keyboard overlays which allow students to use the sense of touch to communicate. He proposes using sounds to describe places to students. When both visually impaired and sighted students join in chats together which use senses other than sight to communicate blind students can participate equally.

In addition, the petitioner submitted letters of recommendation. We cite representative examples here:

██████████ stated:

Although I have very limited experience with visually impaired modern foreign language learners, [the petitioner's] publications particularly resonated with me because I have long had a specialist interest in the potential of computer technology as a curriculum delivery medium for students with special educational

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

needs. I am aware that he has submitted successful Masters and Doctoral theses to the University of Lodz in Poland, making original contributions to scholarship in the field of computer-based visually impaired foreign language learning.

stated:

[The petitioner] was a unique addition to the Computer [Special Interest Group] presenting his research and experience-based approach to using computer assisted instruction to students with visual impairments. IATEFL [International Association of Teachers of English as a Foreign Language] Poland was fortunate to have him as a member because he is one of very few specialists in the world who has done research in the effects of computer assisted instruction on language learning and social inclusion of students with visual impairments.

stated:

To be frankly honest, we have very few individuals in the nation with the sorely needed skills that [the petitioner] possesses. [The petitioner's] work in the area of provision of high quality educational services for blind youngsters is a major contribution to the welfare of those youngsters.

stated:

[The petitioner's] (2002) research is unique in that it encourages the use of assistive technology to expand and deepen the social connection of these patients, or students. That is, his research clarifies methods that go beyond that of merely using the technology to access written materials and acquire academic skills.

Although the following point is obvious to practitioners of neuropsychology, clinical psychology, and school psychology, it may not be so to those in other fields. [The petitioner's] research and approach (2006) to the application of assistive technology for patients with visual impairments also has significant implications for patients with other disabilities, e.g., dyslexia, autism, and traumatic brain injury.

stated:

The applicant is well-published and is a noted international authority on assistive technology for persons who are visually impaired/blind. It was a distinct privilege and honor being his professor and advisor while he was here at [University of Louisville]. I anticipate great things from him that will ultimately benefit many hundreds of persons with visual disabilities.

stated:

[The petitioner] demonstrates outstanding knowledge of this technology. In addition, [the petitioner] has a unique ability to teach these skills in a practical, hands-on fashion, to both visually impaired and sighted people. I, and other instructors at the University of Wisconsin-Milwaukee, have invited [the petitioner] as a guest lecturer for students pursuing certification in special education, to make these students aware of the vast array of technological devices available to enhance the education and quality of life for individuals with disabilities. Also, [the petitioner] currently spends one morning per week in my resource room, teaching my young, visually impaired students the skills necessary to effectively utilize the assistive technology devices available for the visually impaired. These skills are absolutely necessary if the students are to pursue post-secondary education and employment.

Furthermore, the petitioner submitted the following documentation:

1. Screenshots from the website www.schools.becta.org.uk reflecting that [redacted] refers to the petitioner as “a prolific researcher in the field of computer-assisted language learning for the visually impaired”;
2. An email from [redacted] referring [redacted] to an article by the petitioner;
3. A document entitled, “An Analysis of a Concordancer; ‘Wordsmith’” reflecting that the petitioner’s article is referenced for the assignment;
4. Documentation from [redacted] reflecting that 10 of the petitioner’s papers were referenced under the visual impairment section;
5. A paper entitled, “[redacted]” by [redacted] reflecting that the petitioner’s article was cited in the paper; and
6. A paper entitled, [redacted] by [redacted], reflecting that the petitioner’s article was cited in the paper.

In response to the director’s request for evidence, the petitioner submitted the following documentation:

- A. Screenshot from *Google Scholar* reflecting that the petitioner’s work was cited approximately 8 times by others;
- B. A paper entitled, “[redacted]” reflecting the petitioner’s work was cited one time; and
- C. A letter from [redacted], stating that the petitioner contributed to the Assessing Student Need for Assistive Technology (ASNAP) Manual and that it would be posted online “at the end of June 2009.”

In the director's decision, he found that the petitioner's documentary evidence failed to establish eligibility for this criterion. On appeal, the petitioner reiterates the documentation listed above and submitted the following additional documentation:

- i. An article entitled, [REDACTED] reflecting that the petitioner's work was cited one time in the article;
- ii. A partial document reflecting that one of the petitioner's publications is recommended for a course at Johns Hopkins University (JHU) in Spring 2008; and
- iii. An uncertified and partial translation of an article entitled, [REDACTED] reflecting that the petitioner's work was cited one time in the article.

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 scholarly-related "contributions of major significance in the field."

In this case, while the recommendation letters praise the petitioner for his work in assistive technology for the visually impaired, they fail to indicate that his contributions are of *major significance* to 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, [REDACTED] claimed that the petitioner's masters and doctoral theses were original contributions to the field. However, [REDACTED] failed indicate how they were original contributions and how they have impacted the field as a whole and not limited to the petitioner's personal educational achievements. In fact, [REDACTED] failed to state the name, nature, and findings of the petitioner's theses. We are not persuaded that merely completing theses for higher educational requirements, without detailing how those theses have influenced the field as a whole, is sufficient to establish eligibility for this requirement.

Similarly, [REDACTED] broadly indicated that the petitioner contributed "his research and experience-based approach" without offering any specific examples. Furthermore, [REDACTED] failed to indicate any evidence of the petitioner's original contributions of major significance to the field. [REDACTED] simply indicated that IATEFL "was fortunate to have him as a member" without offering any evidence of the petitioner's contributions outside of IATEFL Poland. Finally, we are not persuaded by [REDACTED] claim that the petitioner "is one of very few specialists in the world" demonstrates that the petitioner has made original contributions of major significance.

Moreover, [REDACTED], generally stated that the petitioner's work "is a major contribution to the welfare of those youngsters." However, [REDACTED] failed to identify any contribution made by the petitioner to the field beyond the students with whom he has worked. While [REDACTED] also indicated that the field is lacking others who share the petitioner's skills, [REDACTED] failed to explain how the petitioner's skills are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way.

Furthermore, while [REDACTED] described the petitioner's work as unique and stated that the petitioner's "research clarifies methods," [REDACTED] failed to specifically indicate the petitioner's research or methods and to describe how they have significantly influenced or impacted the field. In addition, [REDACTED] also indicated that the petitioner's research and approach "has significant implications for patients with other disabilities, e.g., dyslexia, autism, and traumatic brain injury," however, [REDACTED] failed explain any present impact the petitioner's work has had in these areas.

In addition, although [REDACTED] claimed that the petitioner "is a noted international authority on assistive technology for persons who are visually impaired/blind," [REDACTED] failed to explain how the petitioner became a noted international authority. Notwithstanding, [REDACTED] failed indicate any original contributions of major significance to the field made by the petitioner. Instead, [REDACTED] generally asserts that he anticipates great things from the petitioner "that will ultimately benefit many hundreds of persons." 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.

Finally, it is clear from [REDACTED] letter that she is impressed by the petitioner's "unique ability" to teach visually impaired and sighted people. However, [REDACTED] failed to identify any original contributions of major significance to the field. While [REDACTED] described the petitioner's dedication to teaching her visually impaired students at the University of Wisconsin-Milwaukee, [REDACTED] failed to indicate how the petitioner's contributions have impacted the field outside of the limited arena of her students at the university.

While those familiar with the petitioner's work generally describe it as "unique," "successful," and "major," the letters contain general statements that lack specific details to demonstrate that

the petitioner's work is 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.³ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

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.

Finally, regarding the petitioner's work cited, referenced, or mentioned by others, we are not persuaded that such evidence is reflective of the significance of his work in the field. For example, regarding item 1, while the petitioner's work is referenced in response to a question regarding research using information and communication technology, we are not persuaded that being referenced on a website demonstrates that the petitioner's contributions have been of major significance to the field. In fact, the website fails to describe the petitioner's original contributions or indicate the significance or impact of the contributions to the field. We note that there are various websites ranging from educational to entertainment purposes. We are not persuaded that international accessibility by itself is a realistic indicator of whether information on a website is sufficient evidence to be considered as an original contribution of major significance to the field. Similarly, regarding item 2, the email merely refers to the petitioner's work as a possible interest for the Japanese school. While the email reflects some interest in the petitioner's work, it falls far short in establishing that his work has been of major significance to the field and not limited to the personal opinion of [REDACTED]. Likewise, regarding items 3 and ii, the documentary evidence reflects that the petitioner's work is referenced as part of an assignment and course. Specifically, when reviewing the partial JHU course material, it appears that there are at least 100 other recommended readings for the course. We are not persuaded that being referenced in a course assignment or being recommended for a reading is demonstrative of the major significance of the petitioner's work.

Regarding the remaining items, we do not find that such minimal citations or references to the petitioner's work demonstrate that it has been significantly influential to his field. Again, while

³ *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

the items reflect some interest, such evidence is not sufficient to establish that the petitioner's work has been widely used or has significantly impacted his field to be considered as original contributions of major significance. A review of the articles and papers do not reflect, for example, that they are about or discuss in-depth the petitioner's work so as to establish the significance of his work to the field. In addition, we note that regarding item C, the letter from [REDACTED] indicates the ASNAP Manual would be posted online "at the end of June 2009." 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; *Matter of Izummi*, 22 I&N Dec. at 175; *Matter of Bardouille*, 18 I&N Dec. at 114. Finally, we note that the petitioner failed to submit a full and certified translation for item iii. 8 C.F.R. § 103.2(b)(3).

Without additional, specific evidence showing that the petitioner's work has been original, unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

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.

In the director's decision, although he found that the petitioner authored scholarly articles in the field, he found that the petitioner failed to establish eligibility for this criterion as the petitioner's work was not cited extensively by others. 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 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, counsel claimed the petitioner's eligibility for this criterion based on serving "as a presenter at many national and international conventions of some of the most highly regarded organizations in the field of special education," such as:

1. International Council for Education of People with Visual Impairments (ICEVI);
2. Assistive Technology Industry Association (ATIA); and
3. IATEFL.

The petitioner submitted the following documentation:

- A. Evidence from the 12th ICEVI World Conference in July 2006 reflecting that the petitioner's paper was presented at the conference;
- B. Evidence from the ATIA 2006 Conference in January 2006 reflecting that the petitioner was a speaker at the conference;
- C. Evidence from the ICEVI European Conference in August 2005 reflecting that the petitioner was a speaker at the conference;
- D. Evidence from the ATIA 2007 Conference in January 2008 reflecting that the petitioner was a speaker at the conference;
- E. Evidence from the Vision Awareness Day for Educators and Parents of Visually Impaired Students in September 2007 reflecting that the petitioner was a speaker for the event;
- F. Evidence from the 11th ICEVI World Conference in August 2002 reflecting that the petitioner contributed to the conference;
- G. Evidence from the Third Workshop on Training of Teachers of the Visually Impaired in Europe on an unidentified date reflecting that the petitioner served as the reporter for the workshop; and
- H. Evidence from the ICEVI European Conference in July 2000 reflecting that the petitioner participated at the conference.

In response to the director's request for evidence, the petitioner submitted the following documentation:

- i. A letter from [REDACTED] reflecting that the petitioner lead a workshop by the Wisconsin Assistive Technology Initiative (WATI) in March 2008;
- ii. An uncertified translation of a letter from [REDACTED] reflecting that the petitioner participated at the 11th BOBCATSSS Symposium in January 2003;
- iii. An email, dated March 25, 2009, from [REDACTED] reflecting that he enjoyed the petitioner's CSUN presentation; and
- iv. An email, dated May 26, 2009, from [REDACTED] requesting the petitioner to be a presenter at the 2009 ATIA Conference in December 2009.

In the director's decision, he found that the petitioner failed to establish that he performed in a leading or critical role. On appeal, the petitioner argues:

The decision states that my presentations at major professional conferences and conventions are merely "important" but not "critical or leading." As indicated in the affidavit submitted with the additional evidence only a small percentage of papers are accepted to be presented at such events as ICEVI conferences, ATIA, or CSUN conferences that are attended by thousands of participants. It means that only leading scholars and inventors are given the floor to present. The informal exchange of e-mail messages between [REDACTED] and me shows

how essential and critical my research is. I was approached by him and asked to provide him with my presentation so that he can share it with his colleagues of Great Britain (see additional evidence). [REDACTED] also expressed his appreciation of my opinion in a professional matter (see additional evidence).

In addition, the petitioner submitted a letter from [REDACTED] reflecting that the petitioner participated at "the national conference on 'The role of libraries in the literacy education and upbringing in the families of people with disabilities'" in September 2002.⁴

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. Based on the submitted documentary evidence listed above, we are not persuaded that the petitioner's speaking and participation at various conferences and workshops demonstrates that he performed in a leading or critical role. The documentation submitted by the petitioner is simply reflective of the petitioner's participation at numerous events. The petitioner failed to submit sufficient documentary evidence that is demonstrative of a leading or critical role. The record of proceeding is absent evidence that distinguished the petitioner from the other participants or speakers at the conferences or workshops. For example, regarding item A, there were at least 12 other papers presented at the conference. Moreover, regarding item C, there were at least 75 other speakers and presentations at the conference. The petitioner failed to explain, for example, how his role as a reporter for item G distinguished him from the two chairpersons and 11 participants.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the petitioner's leading or critical role be "for organizations or establishments that have a distinguished reputation." While the record contains general background information from the respective websites of ATIA, ICEVI, and IATEFL, the petitioner failed to submit independent, objective evidence establishing the distinguished reputations of these organizations.⁵ The petitioner failed to submit any documentary evidence regarding WATI, BOBCATSSS, or CSUN so as to establish their distinguished reputations.

As this criterion specifically requires the petitioner to submit evidence demonstrating that he *performed in a leading or critical role*, the petitioner's submission of documentary evidence that merely reflects that he participated or spoke at conferences or workshops is insufficient to demonstrate eligibility for this criterion. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing to a degree

⁴ We note that the petitioner was the certified translator for the letter. The petitioner failed to submit an independent, objective translation of the letter.

⁵ While the record contains background information regarding IATEFL and counsel claimed the petitioner's eligibility based on his role with IATEFL, the record contains no documentary evidence regarding the petitioner's role with IATEFL.

consistent with the meaning of “leading or critical role” pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). We note that regarding items iii – iv, the documentation reflects 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; *Matter of Izummi*, 22 I&N Dec. at 175; *Matter of Bardouille*, 18 I&N Dec. at 114.

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, counsel claimed the petitioner’s eligibility for this criterion based on a letter from [REDACTED] who stated that the petitioner “is at the top of the salary schedule based on his level of education (doctorate) and years of experience.”

In response to the director’s request for evidence, counsel stated that “[s]ince [the petitioner] has been teaching 13 years he is paid \$66,773 per year under the salary schedule.” In addition, the petitioner submitted the following documentation:

1. A letter from [REDACTED] who stated that “[t]he salary schedule is based on years of teaching experience and level of education”;
2. 2008 – 2009 Teacher Salary Schedule;
3. Form W-2 Wage and Tax Statement 2007 reflecting the petitioner’s wages of \$68,089; and
4. Screenshots from www.payscale.com reflecting median salary for teachers of visually impaired students.

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

The decision appears to disregard the comparison of my pay with the nationwide pay from the table from payscale.com (see additional evidence). It is clear that my pay is higher than [the] average of a person with similar or even more years of teaching experience.

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* [emphasis added].” As cited above, the petitioner’s Form W-2 reflects that he earned \$68,089 for 2007. According to the screenshots cited in item 4, the median wage for teachers of the visually impaired in the United States is \$42,729 for individuals with between 5 to 9 years of experience and \$59,500 for individuals with 20 years or more with experience. However, median wage statistics do not meet the plain language of the regulation. Rather, the petitioner must demonstrate that his salary is significantly high not just higher than the average or the

median. Merely earning above the median wage in his field is insufficient. We note, according to item 2, that the petitioner's salary is not even at the top of his local area.

Moreover, while we do not dispute the statistical information from www.payscale.com, we note that the statistics are based on the salaries of only 23 individuals. We are not persuaded that such salaries from a minimal pool of individuals represent credible statistical data when comparing the petitioner's salary to the median salaries "in relation to others in the field." The petitioner failed to submit sufficient documentary evidence establishing that his salary is high when compared to others in his 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 met the plain language 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 201(b)(1)(A) of the Act. In this case, the record of proceeding reflects that the petitioner has garnered minimal attention regarding his work in the field. 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).

While the petitioner established eligibility for the scholarly articles criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi), we note that the petitioner submitted the following documentation:

1. An article entitled, [REDACTED]
[REDACTED]
2. An article entitled, [REDACTED] October/November 2006;
3. An article entitled, [REDACTED] January/February 2006;
4. A paper entitled, [REDACTED]
[REDACTED]
www.icevi.org, unidentified date;
5. A paper entitled, [REDACTED] unidentified date;
6. A paper entitled, [REDACTED] unidentified publication, unidentified date;
7. A paper entitled, [REDACTED] unidentified publication, August 2005;
8. A document entitled, [REDACTED] - [REDACTED] unidentified date;
9. Eight documents without any English language translations; and
10. An email of a synopsis of a non-translated article entitled, [REDACTED] Rehabilitation and Disability, Accepted for publication in 2009.

While items 1 – 3 reflect that the petitioner has authored scholarly articles in professional or major trade publications, the record does not establish that papers or documents were ever published. Regarding items 4 and 5, it appears that the articles were posted on ICEVI’s website. In today’s world, many organizations post documentation and information on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. However, we are not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.” The petitioner has not demonstrated that www.icevi.org is considered as major media. Regarding items 6 and 7, the papers appear to be presentations made at conferences by the petitioner but fail to reflect that they were ever published. Regarding item 8, the document appears to be a chapter for a book, but the petitioner failed to indicate the book in which the chapter was published, if published at all. Regarding item 9, the petitioner failed to submit any English language translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Regarding item 10, besides the fact that petitioner failed to submit a full and certified English

translation, as there is no indication that the article was published at the time of the filing of the petition, it cannot be relied upon to establish eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 175; *Matter of Bardouille*, 18 I&N Dec. at 114.

Similarly, the petitioner claimed his original contributions of major significance under the regulation at 8 C.F.R. § 204.5(h)(3)(v) based in part on documentary evidence reflecting that his published material was cited approximately eight times by others. Although the petitioner met the plain language of the scholarly articles criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi) through his authorship of three scholarly articles, he has not established that the publication of such articles demonstrates a level of expertise indicating that he 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 research and education, we will evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. 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 his field. As previously indicated, the petitioner claims that his work has been independently cited eight times. While these citations demonstrate some interest in his published and presented work, 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 at the very top of his field. Similarly, while the petitioner submitted some documentation reflecting his work being mentioned or referred to by others in his field, it falls far short in demonstrating national or international recognition.

Furthermore, it must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Unusual in its specificity, section 203(b)(1)(A)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. Again, USCIS may, in its discretion, use as advisory opinions 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 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. Here, many of the experts are personally acquainted with the petitioner, and some have worked with him as colleagues or advisors. Even when written by independent experts, letters solicited by an alien in support of an immigrant petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a teacher who has sustained national or international acclaim.

Regarding the petitioner's salary, we note that while he claims that his salary is high compared to the median salary in his field, his salary is not based upon his accomplishments or recognition in the field, rather, his salary is based upon a pay scale derived from a combination of years worked and degrees earned. Moreover, as previously noted, the petitioner has not even reached to top of the pay scale for his local area. Such facts are not indicative of someone at the top of the field.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his 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). In this case, the petitioner claimed eligibility for the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii) based on documentary evidence reflecting his speaking or participating at conferences and workshops. However, the petitioner failed to submit documentary evidence demonstrating that his speaking and participating were leading or critical roles to organizations or establishments with distinguished reputations. Likewise, while the petitioner claimed eligibility for the high salary criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner based his comparison of salary to a limited pool of median wages.

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.

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.

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).

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.