

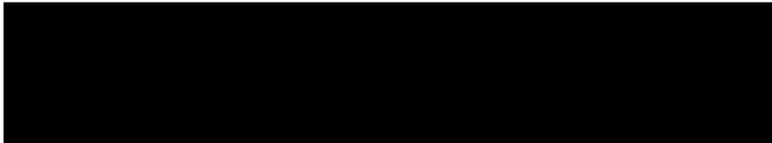
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



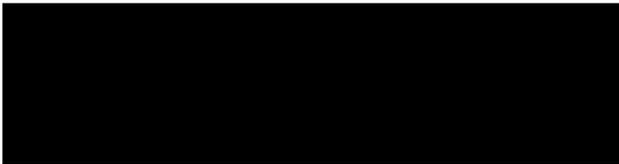
B2

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 07 2011

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:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 October 7, 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. 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.

In the director's decision, he indicated:

The evidence establishes that the petitioner is board-certified in internal medicine. It further indicates that his employer is well-satisfied with his job performance. Indeed, the major university which employs him filed a second-preference immigrant petition on his behalf early in 2007 which USCIS approved five days later. However, because of the per-country limitations on immigrant visas the application to adjust status which the petitioner subsequently filed remains pending and thus he filed this first-preference petition. The point is that USCIS agrees with the many affiants who went on record in support of this petition that the petitioner should be allowed to pursue his career in the United States. However, it does not agree with the petitioner that the evidence establishes that he is one of that small percentage who have risen to the very top of his field and thus it cannot conclude that this petition seeking that high classification should be approved.

On appeal, counsel argues:

[I]t appears the Service improperly considered [the petitioner's] approved I-140 petition pursuant to INA 203(b)(2) in its determination as to whether [the petitioner] was qualified under the first category.

* * *

We note here that according to Form I-140, Immigrant Petition for Alien Worker, which the petitioner signed under penalty of perjury of the laws of the United States on January 29, 2009, the petitioner listed his occupation in Part 5 as "Assistant Professor/Physician" and listed his job title in Part 6 as "Assistant Professor of Clinical Medicine." However, in counsel's cover letter that was submitted with Form I-140, counsel stated that the petitioner "is a talented and extraordinary physician and medical scientist," "is an accomplished physician scientist," and "is a physician of extraordinary ability."

A review of the record of proceeding reflects that the petitioner intends to continue to work in the United States as an assistant professor of clinical medicine as reflected on Form I-140, as well as in recommendation letters submitted [REDACTED]

[REDACTED] All of these individuals are employed with the petitioner at [REDACTED] and discussed the petitioner's area of medical teaching as an assistant professor. The statute and regulations require that the petitioner's national or international acclaim be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the petitioner is also a physician, a professor relies on a very different set of basic skills. Thus, a physician/medical scientist and a professor are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, [REDACTED] extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a physician or a medical scientist. While we acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a practicing physician, a medical scientist, and a professor, the petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See the regulation at 8 C.F.R. § 204.5(h)(5). In this case, the record of proceeding reflects that the petitioner intends to continue to work in the United States as an assistant professor in clinical medicine, and not as a practicing physician or medical scientist. While the petitioner's experience and knowledge as a physician or medical scientist are not completely irrelevant, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as an assistant professor of clinical medicine.

II. 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.*

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:

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).

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).

III. Analysis

A. Evidentiary Criteria

This petition, filed on March 13, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an assistant professor in clinical medicine. On appeal, counsel addressed the following criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner’s documentary evidence failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” Pursuant to *Kazarian*, 596 F.3d at 1121-22, 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 of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

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 contributions “of major significance in the field.”

At the time of the original filing of the petition, counsel claimed the petitioner’s eligibility for this criterion based on the fact that the petitioner’s “research efforts have resulted in major publications in highly-rated scientific peer-reviewed journals and excellent oral presentations at international conferences.” As it relates to counsel’s reference to the petitioner’s published articles as evidence to meet this criterion, we note that the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the publication of scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner’s articles will not be considered under this criterion they will be addressed under the next criterion.

Regarding counsel’s reference to the petitioner’s presentations, the petitioner submitted copies of over 40 presentations. With the exception of one presentation at [REDACTED] [REDACTED] from April 11 – 15, 2003, counsel claimed in her exhibit list that the petitioner gave these presentations to his current employer, [REDACTED], and to his former employer, [REDACTED]. While the petitioner submitted the claimed presentations, the petitioner failed to submit any documentary evidence demonstrating that the petitioner actually gave the presentations at any of these venues. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We further note that the record of proceeding reflects that the petitioner presented two of his abstracts at [REDACTED]

on

Notwithstanding the above, even if the petitioner submitted sufficient documentary evidence demonstrating his presentations, the petitioner failed to submit any documentary evidence

establishing that his presentations were of major significance in the field. Merely submitting evidence of the petitioner's presentations is insufficient to demonstrate eligibility for this criterion without documentary evidence establishing that the petitioner's presentations have impacted or influenced the field, so as to establish that the petitioner has made original contributions of major significance in the field. Furthermore, as indicated above, counsel claimed that almost all of the petitioner's presentations were given to his employers. The petitioner failed to establish that his presentations at [REDACTED] and [REDACTED] have been of major significance to the field as a whole and not limited to the establishments at which he has worked.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] University of North Texas, who stated that the "letter is written after having carefully reviewed [the petitioner's] credentials." It does not appear that [REDACTED] was aware of the petitioner or his original contributions prior to being contacted by the petitioner. Instead, it appears that [REDACTED] was asked by the petitioner to review selected documentary evidence and provide his professional opinion. [REDACTED] conclusions about the petitioner's work are not based on his prior recognition of the petitioner and his work but merely on the evaluation of the documents given to him by the petitioner. As such, [REDACTED] determinations provide very little weight, if any, to demonstrate that the petitioner has made original contributions of major significance in the field. For example, [REDACTED] stated:

Another interesting observation that [the petitioner] made in subjects with [REDACTED] [REDACTED] was their intolerance to minimal physical exertion. This is very similar to that of a patient with left heart problems. The subsequent study revealed that these patients have inappropriately decreased left heart function compared to normal people while exercising. This study helped delineate the group of patients who *might* actually benefit from treatments to improve left heart function [emphasis added].

While [REDACTED] indicated an observation made by the petitioner, he failed to establish that the finding has been of major significance to the field. Instead, [REDACTED] generally asserts that the patients "might actually benefit from treatments." 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. The fact remains that any measurable impact that results from the petitioner's observations and studies will likely occur in the future.

Furthermore, [REDACTED] stated:

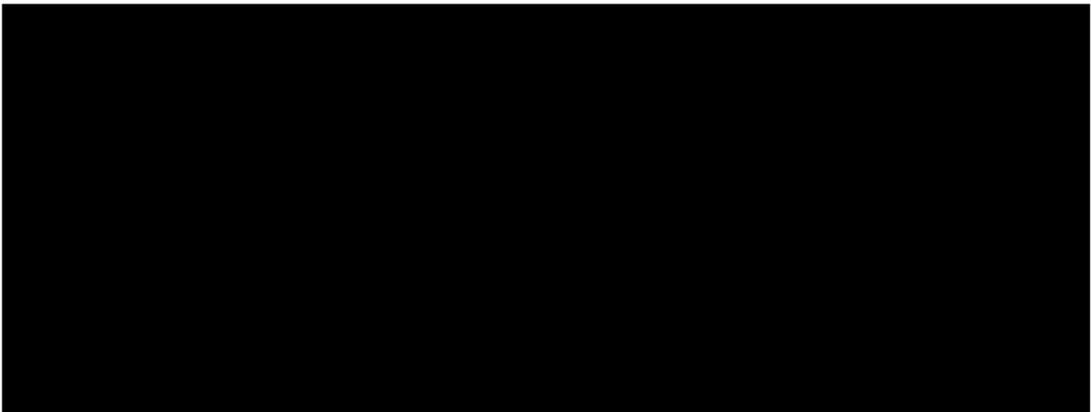
[The petitioner] studied the effects of war related trauma on the function of heart to stress response in Gulf War Veterans with unexplained fatiguing illness. The purpose of this research study was to demonstrate that the gulf war veterans who were traumatized either by their own injuries or because they witnessed their colleagues get injured or killed, were more likely to develop abnormalities in cardiovascular function and fatiguing illness.

Gulf War Veterans, with [REDACTED] showed lower blood-pressure responses to stress than those without. Prior to this study objective evidence of causes of fatiguing illnesses in Gulf War Veterans was lacking. Studies showed that a considerable number of Gulf War veterans have symptoms of chronic fatigue, which was often misdiagnosed as depression. His work showed posttraumatic stress contributes to cardiovascular dysregulation and abnormal stress responses in Gulf War Veterans and this may indeed be the physical basis for the condition (also reported in HealthSCOUT News).

Again, while [REDACTED] discussed the findings of the petitioner's studies regarding [REDACTED] in Gulf War Veterans, he failed to demonstrate that the petitioner's studies and findings have impacted or influenced the field. In fact, [REDACTED] stated that the petitioner's work showed that cardiovascular dysregulation and abnormal stress responses "may indeed be the physical basis for the condition." As it appears that the petitioner's studies have not resulted in a definitive conclusion and further studies may be required, [REDACTED] failed to establish that the petitioner's work on [REDACTED] in Gulf War Veterans, while original, can be considered to be of major significance to the field. 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.

The petitioner also submitted documentary evidence from *Google Scholar* reflecting that the petitioner's work was cited 58 times by others. Specifically, the record of proceeding reflects the following:

- 1.
- 2.
- 3.



[REDACTED]

We note that the petitioner failed to submit any documentary evidence demonstrating that his one other article [REDACTED]

[REDACTED] as well as his abstracts and poster and conference presentations discussed above, has ever been cited by others in their work. 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 to 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, we are not persuaded that the total number of 58 citations, including 42 citations from one article, is reflective that the petitioner's work has been of major significance in the field. Furthermore, while the petitioner submitted partial articles that cited the petitioner's work, a review of the partial submissions fail to reflect that the petitioner's 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. 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.

Similarly, while the petitioner's poster presentation and abstracts demonstrate that the petitioner's 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 presentations of the petitioner's work at several venues are 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 venues.

Finally, a review of the record of proceeding reflects that the petitioner submitted numerous recommendation letters. While the recommendation letters praise the petitioner for his work as a researcher and physician, 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] Medical Center, stated:

I must tell you I have seen many physicians who have tried to do research over the years and [the petitioner] is among the best. In addition, he has expanded his credentials from student and researcher to include teaching. Even as a fellow, he

had a wonderful way with our research assistants and was always willing to take time to teach. I thought he'd become a great teacher and that in fact is what has happened. I have to point out again that he is most unusual among physicians in being a clinician, educator and researcher. In the past, this was the model of the classical academic physician who did so much to advance medical science. With [sic] the changes in the economics of medicine, very few young physicians have the time or interest to pursue this track today. In that regard, [the petitioner] stands out among his peers.

Although [redacted] discussed the petitioner's "unusual" talents as a clinician, educator, and researcher, we are not persuaded that such talents demonstrate original contributions of major significance in the field. Assuming that the petitioner's job skills are unique to his occupation, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998). [redacted] failed to indicate any original contributions of major significance in the field made by the petitioner.

[redacted] stated:

[The petitioner] is a rising star in academic internal medicine. To date, he has produced a considerable body of scholarly work for a physician of his age. In view of the difficulty in securing funded research, I am truly impressed with his clinical research achievements. I witnessed the acuity of his analytical skills when I served with him on the HRSA grant review panel. Given the competition to secure funding for research, I judge him to be among the top of his field based on his track record to date.

Similarly, [redacted] also failed to provide evidence of the petitioner's original contributions of major significance to the field. Instead, [redacted] made general statements about the petitioner's "clinical research achievements" and failed to identify any original contributions of major significance.

[redacted] stated:

[The petitioner] is currently collaborating with me on several research programs and this year has co-authored 3 publications on insulin therapy including a review on insulin pumps [redacted] As a [redacted] [redacted] he has a funded project investigating emerging risk factors that predict increased risk of heart disease in Hispanic women with diabetes. He is also involved with mentoring resident research projects on diabetic cardiac neuropathy and hyperparathyroidism in diabetic patients. He is currently developing a research proposal using antisense

oligonucleotides complexed to engineered HDL particles to alter genetic pathways in diabetes.

While [REDACTED] briefly discussed some of the petitioner's previous and current work and projects, he failed to indicate how the petitioner has made original contributions, let alone how the petitioner's work has been of major significance to the field.

[REDACTED] stated:

[The petitioner] was involved in a National Institutes of Health (NIH) funded investigative study of the effects of post traumatic stress on cardiovascular function in gulf war veterans with fatiguing illness. Prior to this study objective evidence of causes of fatiguing illnesses in Gulf War Veterans was lacking. Studies showed that up to 45 percent of Gulf War veterans have symptoms of unexplained fatigue which was often misdiagnosed as depression. [The petitioner's] work showed that posttraumatic stress contributes to cardiovascular dysregulation and abnormal stress responses in Gulf War Veterans and this may indeed be the physical basis for the condition. Because of its importance, the results of this study were published in [REDACTED] an internationally known scientific journal. This study has also been discussed at the United States Department's [*sic*] of Health and Human Services and reported by the media.

Although [REDACTED] talked about the petitioner's research on post traumatic stress disorder in Gulf War veterans and credited the petitioner with the correlation of cardiovascular dysregulation and abnormal stress responses, he claimed that the demonstration of the importance of the petitioner's work was evidenced by the publication of the study in [REDACTED] and discussion by the U.S. Department of Health and Human Services and the media. However, as discussed previously, we are not persuaded by the fact that the petitioner's work has been published necessarily demonstrates that his work has been of major significance to the field. [REDACTED] failed to indicate, for example, that the petitioner's research has been influential in the field, such that the petitioner's research has assisted in the treatment of post traumatic stress disorder.

[REDACTED] stated:

[The petitioner] is American board certified in Internal Medicine and he currently is a respected faculty [REDACTED]. He has been very active in initiating new teaching modalities for residents and was indeed nominated for an Innovation and teaching award from this campus. He has become actively involved in several research interests which include not only innovations in medical education but also Diabetes, Women's Health, Health Disparities, and Post War illnesses. He was

instrumental in improving the research environment during his residency and has made original contributions in the mentoring of residents on this campus as well.

Regarding [REDACTED] letter, he described the petitioner's work only as it related to the [REDACTED] and not to the field as a whole. While the petitioner may have made original contributions in assisting and mentoring students, [REDACTED] failed to indicate how the petitioner's involvement with medical students is an original contribution of major significance to the field.

[REDACTED] stated:

[The petitioner] especially shines in the area of research. His research interests are broad but include diabetes, vascular disease, lipid metabolism, women's health, somatization disorders, and fibromyalgia. His previous work included work with veterans suffering from post traumatic stress disorder, and he is applying the knowledge gleaned from that effort to several of his current studies. He is currently participating in, at least, seven separate research studies – a remarkable effort for any full time faculty member let alone one without formally protected research time.

[The petitioner's] research strengths are also appreciated beyond his own medical school as evidenced by his appointment onto the review board of the [REDACTED] his selection as a reviewer for federal grants on education for the Dept of Health and Human Services, and his appointment [REDACTED] for poster presentations at the national AMA research meetings. He recently has written two articles accepted for publication which update the practice management of diabetes for physicians. He is involved in exciting and innovative research examining premature cardiovascular disease in women and rural Hispanic populations with chronic vascular and renal disease. The outcomes of these studies may have major implications in the future management of these conditions.

Like some of the previously discussed recommendation letters, [REDACTED] merely praises the petitioner's skills as a researcher and mentions the petitioner's involvement as a reviewer that was already discussed under the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Moreover, [REDACTED] indicated that "[t]he outcomes of these studies may have major implications in the future management of these conditions." 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. As [REDACTED] failed to provide any evidence of the petitioner's current or past findings, let alone the significance of the work on the

field, the speculation of any possible or prospective impact will not suffice to establish eligibility for this criterion.

stated:

[The petitioner] has initiated several research projects in the area of diabetes, cardiovascular disease, and cholesterol abnormalities. He has received some seed grant funding for three projects. He has applied for a "pathfinder" grant with NIH NIDDK. This project is designed to use a unique rodent model to study the development of diabetes and carbohydrate abnormalities. He is collaborating with [redacted] in our department to study the effects of estrogen and progesterone on carbohydrate metabolism and cardiovascular disease. This project could make a significant contribution to the area of women's health.

Like [redacted] letter, [redacted] letter briefly mentioned that the petitioner has "initiated several research projects" and claimed that a "project could make a significant contribution." 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. Dr. Hampton failed to specify any original contributions made by the petitioner of major significance to the field.

stated:

[The petitioner] has developed multiple research projects examining hypotheses to improve outcomes in rural Hispanic populations with diabetes and heart disease. Positive findings from these studies will provide information on pathways to limit cardiovascular disease in high risk populations.

[redacted] speculates that the petitioner's studies "will provide information on pathways to limit cardiovascular disease in high risk populations." 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. [redacted] failed to describe any of the petitioner's contributions that have been of major significance to the field.

stated:

[The petitioner's] work is of great importance to our area and may have a significant impact on health care policy-making in this State. His contributions to health care instruction, medical practice and medical research make him a valuable member of this community and asset to this country.

While [redacted] speculated that the petitioner's work "may have a significant impact," he also failed to specifically identify any original contributions of major significance to the field. Instead, [redacted] generally claimed that the petitioner made contributions to health care and medical practice and research without identifying those contributions, let alone the impact or influence to health care or medical practice and research.

[redacted] stated:

I have collaborated with [the petitioner] on multiple scientific activities. One of the interesting research proposals looked at job stress as a significant contributor to physician dissatisfaction, burnout and attrition. We researched the predictors of job stress in physician trainees and presented preliminary data from this study at the prestigious annual research meeting of the Medical Society of State of New York.

Although [redacted] mentioned a "research proposal" on which he collaborated with the petitioner, he failed to indicate the findings of this research; rather he simply indicated that the "preliminary data" was presented to a research meeting. [redacted] failed to discuss the impact or influence of the research so as to establish that it was an original contribution of major significance to the field and not limited to the research meeting.

[redacted] stated:

I have collaborated with [the petitioner] on an interesting project examining the "Predictors of prescription errors in the elderly". It is estimated that there are more than a million preventable medication errors that occur in the United States annually. A third of these happen in the vulnerable geriatric population. Annually at least 7000 deaths are attributed to these errors. These medication errors are undoubtedly costly – to patients, their families, their employers, and to hospitals, health-care providers, and insurance companies. It is also estimated that the financial burden for treating these medication errors is a whopping \$3.5 billion.

Previous research has identified the lack of physician continuity, increased intensity of medical care and drug therapies are associated with an increase in prescription errors in the elderly. Our research highlighted the presence of additional predictors of prescription errors and the need for further research in increasing physician awareness to better patient outcomes. This work was recognized and accepted for presentation at the annual meeting of the American

Geriatric Society – a premier organization working to improve care of the elderly. The abstract “[REDACTED]” was also published in the Journal of American Geriatric Society.

Similar to the recommendation letter from [REDACTED] letter briefly described the findings of the petitioner’s research and indicated that it was presented at an annual meeting of the American Geriatric Society (AGS) and published in its journal. However, [REDACTED] failed to indicate that the research had a significant impact or influence in the field as a whole and that it was not limited to the audience at AGS’ meeting.

While those familiar with the petitioner’s work and skills generally describe them as “unusual,” “influential,” and “significant,” 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.² 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.

We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner’s work has been original and 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.

² *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In the director's decision, he found that the petitioner's authored published articles and the number of times his work was cited by others was not "consistent with one who is amongst those at the top of his field." 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.

The director found that the petitioner failed to establish eligibility for this criterion. Specifically, the director found:

The petitioner made no contention that his role is more leading or more critical than the roles performed by other professors, associate professors, and assistant professors at his university. Rather, he wrote that "it is very doubtful the role of professor is not vital or essential to the function of a university." The petitioner reports that the provision of health care to patients "is a critical role for a medical center." The petitioner thus indicates a belief that most university assistant professors and most primary health care providers perform in critical roles, and at a certain level that is correct. However, for purposes of identifying those who have risen to the very top of a field, a more restrictive level is necessary. Therefore, USCIS advised the petitioner that this criterion must be met at the organizational level.

The petitioner's response indicates that he performs some specific duties not common to his co-workers, but it does not establish that the role which he performs for his university is more critical than the roles performed by its many other professors of various ranks. Since for purposes of the high classification requested USCIS does not agree that every professor at a major institution meets the eighth criterion, it cannot be found that the evidence establishes that the petitioner meets that criterion because the evidence does not greatly distinguish him from other professors.

On appeal, counsel argues:

[The petitioner] proved that he held a critical role at a distinguished reputation university. The Service recognized that [REDACTED] has a distinguished reputation

but found that [the petitioner's] position was not "more leading or more critical than the roles performed by other professors, associate professors, and assistant professors at his university." The legal basis for the Service's requirement to distinguish [the petitioner's] role from other professors at the university is unclear. Since the regulations do not define "leading" or "critical," we must accept that the plain meaning of these words apply to this criterion. According to Merriam-Webster dictionary, the pertinent of "critical" is essential or vital. It is very doubtful the role of professor is not vital or essential to the function of a university. Therefore, we do not understand the Service's statement that implies that an assistant professor of medicine does not hold a critical role in a medical school. Moreover, [the petitioner] provides health care to patients of his employer as well. Certainly, this is a critical role for a medical center.

While [the petitioner's] roles at Texas Tech described in great detail [in] our petition are both leading and critical, we do not believe the regulations require us to distinguish his critical role from the roles [of] all other professors. To do so would require us to prove that the role is both leading and critical – a requirement not contained in the regulations.

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." As such, the director's reference that "[t]he petitioner made no contention that his role is more leading or more critical than the roles performed by other professors, associate professors, and assistant professors at his university" is consistent with the plain language of the regulation. In order to establish eligibility for this criterion, the petitioner must demonstrate that his roles are leading or critical. We cannot assume that the petitioner's job title automatically demonstrates a leading or critical role. Instead, the petitioner must submit documentary evidence that is reflective of leading or critical roles. 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.

A review of the record of proceeding reflects that the petitioner submitted the following documentary evidence:

1. A memorandum dated February 4, 2002 to the petitioner from [REDACTED]
2. [REDACTED]

3. A letter dated November 21, 2005 to the petitioner from [REDACTED]
[REDACTED]
4. A certificate from [REDACTED] for his participation at the [REDACTED]
[REDACTED]
5. A letter dated March 6, 2006 to the petitioner from [REDACTED]
[REDACTED]
6. Certificates from the Medical Society of the State of New York (MSSNY) for the petitioner's participation in the [REDACTED]
[REDACTED]
7. A letter dated September 27, 2006 to the petitioner from [REDACTED]
[REDACTED]
8. A letter dated November 14, 2008 to the petitioner from [REDACTED] informing the petitioner that he completed the two-year provisional period and has been approved for advancement for full Active staff status within the Department of Medicine;
9. A screenshot from [REDACTED] listing the petitioner as a physician;
10. A letter dated August 4, 2006 to the petitioner from [REDACTED]
[REDACTED]
11. A letter dated October 2, 2007 to the petitioner from [REDACTED] informing the petitioner of his non-provisional Associate Staff status;
12. A memorandum dated April 11, 2007 from [REDACTED]
[REDACTED] reflecting that for the third quarter of

2006, the petitioner had a 0.00% mortality rate for the care of his 51 patients;

13. A memorandum dated June 27, 2008 from [REDACTED] reflecting that for the fourth quarter of 2007, the petitioner had a 0.00% mortality rate for the care of his 60 patients;

14. A letter dated September 10, 2008 to the petitioner from [REDACTED]
[REDACTED]

15. A document from [REDACTED] indicating that the petitioner is a medical staff member;

16. An email dated January 14, 2008 to the petitioner from [REDACTED]
[REDACTED]

17. An email from [REDACTED]
[REDACTED]

18. A "Resident Agreement" between the petitioner and [REDACTED] for July 1, 2003 to June 30, 2004;

19. An email dated October 3, 2008 from [REDACTED] informing the petitioner that his abstract was "accepted" for the poster competition at the 2008 [REDACTED]
[REDACTED]

20. An email dated November 14, 2008 to the petitioner from [REDACTED] requesting the petitioner to serve as a member on the Billing Compliance Advisory Committee;

21. A letter dated May 12, 2006 from [REDACTED]
[REDACTED]

22. An employment agreement from [REDACTED] for the petitioner as an [REDACTED] from 2008 - 2009;

23. A document from [REDACTED] listing the petitioner as an [REDACTED]
[REDACTED]
24. A letter dated January 8, 2007 to the petitioner from [REDACTED]
[REDACTED]
25. A screenshot from www.ttuhscc.edu reflecting the announcement that the petitioner "was elevated to the position of full [REDACTED]
[REDACTED]

Regarding items 1 and 2, the documentary evidence merely reflects that the petitioner was selected to serve as an alternate on the [REDACTED]. The petitioner failed to submit any other documentary evidence demonstrating that his role as an alternate on the committee was leading or critical to [REDACTED]. Regardless, we are not persuaded that serving as an alternate on a committee rises to the level of leading or critical within [REDACTED] as a whole.

Regarding item 3, the document simply reflects that the petitioner served on the Credentialing Committee at the AMA-RFS Interim Meeting. Similar to items 1 and 2, the petitioner failed to submit any other documentation establishing that his one-time role as a committee member within AMA reflects a leading or critical role in the AMA as a whole. Regarding item 4, the document reflects that the petitioner presented his poster at the AMA symposium. Again, we are not persuaded that merely presenting a single poster at a symposium sponsored by the AMA is demonstrative of a leading or critical role in the AMA.

Regarding item 5, while the letter thanks the petitioner for being a preceptor at a course at NYMC, the petitioner failed to submit any other documentation establishing that his role as a preceptor for a single course is leading or critical to NYMC.

Regarding item 6, similar to item 4, the petitioner failed to establish that his two poster presentations at a symposium reflects his leading or critical role to MSSNY. Simply making presentations at a limited engagement does not reflect a leading or critical role to MSSNY as a whole and only reflects that he contributed to a single poster symposium.

Regarding items 7 – 9, the documentation relates to the petitioner's position at [REDACTED] as a physician and not as a professor or educator. Nonetheless, without additional supporting documentary evidence we are not persuaded that the petitioner's position as a physician or two-year provisional appointment demonstrates that his role with [REDACTED] was leading or critical pursuant to the plain language of the regulation.

Regarding items 10 – 15, the documentary evidence pertains to the petitioner's position as part of the medical staff as a practicing physician and not in his field of medical education. We note

that the letter cited in item 10 reflects that “[the petitioner’s] performance and patient care shall be monitored and observed by the chairman of [the petitioner’s] department.” It appears that the petitioner is in a subordinate role to the chairman of the department, which is not reflective of a leading or critical role. The petitioner failed to establish that he performed in a leading or critical role with MCH in his field of expertise.

Regarding item 16, the document merely reflects that the petitioner was “recommended to serve” on [REDACTED] H. Notwithstanding that the petitioner failed to submit any documentary evidence reflecting that he actually served on the committee, the petitioner failed to establish that his service is representative of a leading or critical role to Regency Hospital as a whole and not limited to service on a committee within [REDACTED]

Regarding item 17, similar to item 16, the email simply reflects that the petitioner was “accepted” into the 2008 AAIM Executive Leadership Program, and not that he participated in the program. Even if the petitioner established that he participated in the program, the petitioner failed to submit any documentary evidence reflecting his roles and responsibilities to establish that he performed in a leading or critical role.

Regarding item 18, the document relates to the petitioner’s position as a resident at MVH and not in the petitioner’s field of expertise. Regardless, the petitioner failed to submit any other documentary evidence establish that his position as a resident was leading or critical to MVH.

Regarding item 19, the email merely reflects that the petitioner’s abstract was “accepted” for the poster presentation and not that the petitioner actually presented the poster. Nonetheless, as indicated above, we are not persuaded that merely presenting a single poster at the TAIM’s Annual Meeting demonstrates that the petitioner performed in a leading or critical role for TAIM.

Regarding item 20, the email only requests the petitioner to serve on the Billing Compliance Advisory Committee. The petitioner failed to establish that he actually served on this committee. In addition, the petitioner failed to establish to which organization or establishment that this committee pertains. Regardless, the petitioner failed to submit any other documentary evidence demonstrating that he performed in a leading or critical role.

Regarding items 21 -25, the documentary evidence reflects that the petitioner is employed as an assistant professor and associate program director for the internal medicine residency program [REDACTED]. The petitioner also submitted recommendation letters from the following individuals at [REDACTED]

Since [the petitioner] joined the faculty in July 2006, I have served on several committees with [the petitioner]; most notable are [REDACTED]

[REDACTED] In these capacities, he has proven to be an effective leader in support of the educational mission of the school, especially in the preparation for the introduction of third and fourth year undergraduate medical students to the campus in July 2009.

In May of 2007, [the petitioner] was appointed as [REDACTED]. This is the largest program on campus consisting of approximately 34 graduate medical doctor residents. His appointment was directly related to his ability to counsel and lead the residents as they progressed through their three year training experience. The program was experiencing significant problems relating to work hours, disorganization, and the potential loss of residents from the program. Through his direct efforts, he managed to ameliorate problems relating to morale, educational experience and mentorship. His intervention subsequently culminated in receiving a full five year accreditation of the program by [REDACTED].

[The petitioner] was appointed to [REDACTED]. In this capacity, he was instrumental in helping to establish the organizational plan and resource infrastructure for the introduction of third and fourth year undergraduate medical students to our campus. This entailed the appointment of faculty clerkship directors and their training and development along with curriculum development, simulation laboratory and clinical continuity experiences for the students. His efforts have contributed to meeting all of the campus planning objectives in support of this initiative. Additionally, he has been appointed to the Admissions Committee for medical students and residents for the entire TTUHSC system. This appointment is indicative of the TTUHSC senior leadership's confidence and respect for [the petitioner's] professional judgment in the selection of future physicians.

Since joining the faculty, [the petitioner] has served on the Regional Policy Committee of the Faculty Practice Plan and currently serves as its [REDACTED]. This committee establishes governance, structure, policy and procedures relating to the delivery of health services to the community and the catchment area of the [REDACTED]. This is a senior position on the campus of which members are selected based on their professional and administrative capabilities. [The petitioner] was instrumental in reorganizing the structure of the Faculty Practice Plan from a departmental model to a clinical operations group model. This restructuring improved patient access, standardized procedures between six different clinical departments and improved the utilization of support staff. This initiative has increased the number of outpatient visits with the same level of staffing which directly enhances the improving experiences while at the same time enhanced revenues.

[REDACTED] listed the petitioner's "critical role and some of his extraordinary contributions to the school" as follows:

[REDACTED]
[The petitioner] is one of the youngest associate program directors and probably one of the most accomplished in this country. This responsibility is entrusted to an individual with the highest capabilities, one who works to administer and maintain an environment conducive to educating residents in all of the [REDACTED] is responsible for accreditation of post-MD medical training programs within the United States) competency areas. He a) reviews applications, interviews, selects prospective trainees, b) supervises, teaches, and evaluates medical students and postgraduate trainees during their in-patient and out-patient rotations. c) delivers educational modules which he has developed.

* * *

[REDACTED] - The educational task force was created to 1. Research, develop and implement a core curriculum for all the primary training programs on campus and 2. Coordinate the campus efforts on the delivery of educational experiences for 3rd and 4th year medical students. Now we have an "ACGME core competency curriculum" which is being successfully implemented for the past 2 years enhancing the training experience for doctors in training. This is a unique curriculum which in addition to common clinical diseases also talks about ethics, business and law in medicine. In addition to help conceive this curriculum, [the petitioner] himself teaches important topics like [REDACTED]
[REDACTED] We also now have our first group of 3rd year medical students successfully completing their clinical rotations across the campus.

Member Graduate Medical Education Committee – The GME committee is a super committee that oversees, reviews, and remedies the performance of individual training programs, their compliance with the rules of the accrediting agencies, training content, trainee satisfaction among others. Only faculty heavily involved in residency training are appointed to this committee and [the petitioner] is one of them. As a member of this committee he recently reviewed the performance of the subspecialty training program in Geriatrics.

Member of SOM – Admissions Committee for Medical Students – [The petitioner] is an active member of this committee which reviews close to 2000 prospective medical school applicants, interviews and then selects 140 students for admission. This committee has the critical responsibility of extensively

reviewing applicants for assessing preparedness of students in assuming the rigors of training and identifies future doctors.

reviews the finances, performance of the business office, and the clinical operations of the campus. It also formulates policy, develops strategic plans for the campus and the chairman of RPC recommends policy issues and changes to the Dean.

* * *

– [The petitioner] chairs this committee which sets institutional standards for quality of care provided by the university's physician, nursing and allied health staff in all the ambulatory practices and at the county hospital system. . . . [The petitioner] designed a brief educational activity to increase the awareness of physicians. The result, on a subsequent quarterly review was whopping overall 99% compliance and this was due to Texas Tech physicians achieving 100% compliance.

[The petitioner's] role at the school is unique in that he is actively contributing to all these challenging roles while fulfilling very well his primary responsibility of providing quality healthcare in this medically underserved area. It is no surprise that [the petitioner] is appointed as the [redacted] to supervise operations when the regional chairman is travelling.

[redacted] stated:

[The petitioner] has been an exemplary faculty member, involved in all aspects of the Department, including direct patient care, medical teaching, research, and administration. He is well-respected as a clinician and well-regarded by his patients of Odessa, Texas and the surrounding region, which is a medically-underserved area. Within medical education, he is the [redacted]

He teaches medical residents in training in both the inpatient hospital and outpatient clinic settings. As a researcher, he is a rising young investigator with publications and research projects that are well-outlined on his CV, which I will not repeat here, but to which I can attest.

While [redacted] credited the petitioner with successfully serving as the [redacted] with [redacted] as evidenced by receiving a full five year accreditation of the program by the [redacted] and serving on several committees within [redacted] such as the [redacted]

the [REDACTED] the record falls far short of establishing that the petitioner has performed in a leading or critical role for [REDACTED] as a whole. We are not persuaded that the petitioner's role as [REDACTED] is leading or critical when compared to his references. In fact, the record appears to reflect that the petitioner is subordinate to [REDACTED], who is the [REDACTED] and [REDACTED], who is the [REDACTED] also appears to hold a higher position than the petitioner. Moreover, as the petitioner is the [REDACTED] the petitioner failed to submit any documentary evidence that distinguishes the petitioner from the [REDACTED]. Furthermore, the petitioner failed to submit, for example, an organizational chart showing the petitioner's position for the internal medicine residency program relating to the position of others at [REDACTED]

The record of proceeding also contains a reference letter from [REDACTED]

[The petitioner] demonstrated leadership has led to him being appointed as the [REDACTED]

[REDACTED] Both the centers focus on development of community educational programs, patient education, moderating patient support groups, continuing medical education for nurses and physicians to eventually improve patient outcomes in the [REDACTED]

Besides the letter from [REDACTED] the petitioner failed to submit any other documentary evidence regarding [REDACTED] so as to establish that it has a distinguished reputation. Again, merely referring to the petitioner's position title is not sufficient to establish that he performed in a leading or critical role. [REDACTED] failed to explain or provide any examples of how the petitioner has performed in a leading or critical role with [REDACTED] 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. The lack of supporting documentary evidence gives the AAO no basis to gauge the leading or critical role of the petitioner.

We note here that at the time of the original filing of the petition, counsel also claimed the petitioner's eligibility for this criterion based on the petitioner's presentations at various conferences and meetings addressed under the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v). As discussed, we are not persuaded that presenting abstracts at conferences is reflective of a leading or critical role for an organization or establishment. The petitioner failed to demonstrate his responsibilities and accomplishments during the conferences so as to establish that he performed in a leading or critical role.

While the petitioner performed his assigned duties, the record falls far short in establishing that the 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). Even if the petitioner established that his role with TTUHSC is leading or critical, the petitioner failed to meet the plain language of the regulation which requires leading or critical roles in more than one organization or establishment.

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.

The director found that the petitioner failed to establish eligibility for this criterion. Specifically, the director found in his decision:

[T]he petitioner initially submitted evidence regarding wages earned by general internists, medical scientists, doctors of internal medicine, and physicians employed by colleges and universities. The salary commanded by the petitioner is significantly higher than that earned by most medical scientists, but it is only somewhat higher than the median earned by other groups of physicians and is actually lower than the median salary earned by physicians with a considerable amount of experience (over twenty years). Moreover, considering the petitioner's current position, USCIS requested evidence which established that his salary is high compared to that earned by other professors of clinical medicine. USCIS suggested (but did not require) a comparison to the salaries earned by such professors at the other schools in the conference of which the petitioner's university is a member. The petitioner's response included evidence of salaries earned by postsecondary health specialties teacher. USCIS does not agree that this is the appropriate comparison group for the petitioner's occupation. Since he has reported that he is a professor of clinical medicine, the appropriate comparison group would be other professors of clinical medicine. Since the evidence does not establish that the petitioner commands significantly high remuneration in relation to others in that field, nor significantly high remuneration in relation to all other physicians in the United States, regardless of age or experience, it cannot be found that he meets [this criterion].

On appeal, counsel argues:

[T]he Service refused to recognize that [the petitioner's] salary exceeded that of other practicing physicians. It rejected the U.S. government's own salary survey and claimed [the petitioner] did not command a high salary. We disagree. As an internist and as a medical scientist, [the petitioner's] current salary of \$160,000 far exceeds the average reported salaries [of] other professionals both on a local and national level. We do not have data on [redacted] schools that the Service requested. As we understand it, the term [redacted] refers to college athletic conference of twelve schools mostly in the central region of the state. As this

petition is for physician, not an athletic coach, we do not understand the relevance of salaries for assistant professors at "Big 12" schools.

A review of the record of proceeding reflects the following submitted documentation by the petitioner:

1. A "Faculty Memorandum of Appointment Non-Tenure Acquiring Rank," dated July 28, 2008, reflecting the petitioner's salary at \$160,000 as
2. A screenshot from reflecting the petitioner's gross salary of \$13,333.33 for pay period ending November 30, 2008;
3. A screenshot from and a paystub reflecting the petitioner's gross salary of \$19,333.33 for pay period ending on December 31, 2008;
4. A screenshot from for the Foreign Labor Certification Data Center reflecting the median wage for
5. Screenshots from for the U.S. Department of Labor, Bureau of Labor Statistics reflecting the mean annual wage for \$156,790;
6. A screenshot from for the Foreign Labor Certification Data Center reflecting the median wage for nonmetropolitan area is \$153,629;
7. A screenshot from for the Foreign Labor Certification Data Center reflecting the median wage for \$63,648;
8. A screenshot from for PayScale reflecting the median salary for in the United States is \$139,284; and
9. A screenshot from for PayScale reflecting the median salary for at a college or university is \$137,668.

Regarding items 1 – 3, the documentary evidence reflects that the petitioner's salary as an is \$160,000 per year. However, regarding item 4, the screenshot

reflects the median wages of [REDACTED] area. The petitioner failed to submit any documentary evidence establishing that postsecondary health specialist teachers equate to the petitioner's occupation as an assistant professor in clinical medicine. Moreover, as 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," the median level four wages (fully competent) do not meet this requirement. Accordingly, the petitioner has not established that his salary is significantly high in relation to other assistant professors in clinical medicine as a whole and not limited to the Odessa, Texas area.

Regarding items 5 – 9, the documentary evidence relates to the occupations of physicians and medical scientists. 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 discussed previously, the petitioner intends to continue to work in the United States as an assistant professor in clinical medicine and not as a physician or medical scientist. Therefore, the salaries and wages of physicians and medical scientists do not relate to the petitioner's field of expertise. Even if the documentary evidence related to the petitioner's occupation, which it does not, the documentary evidence reflects *median* wages and not evidence that the petitioner's salary is high when compared to others in the field. In fact, the median wages reflected in the above documentary evidence for level four physicians is only slightly lower than the petitioner's salary at [REDACTED]. Comparing the petitioner's salary to the median wages of physicians and medical scientists clearly does not reflect that the petitioner has commanded a high salary in relation 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 established eligibility for only two of the criteria, of 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 authored some scholarly articles, served as a reviewer for student poster presentations and grants, and has performed routine duties in his field of endeavor. 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 criterion 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 we determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner’s judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. The petitioner established eligibility based on his participation with the [REDACTED] as part of the petitioner’s continuing education activities and as a reviewer on the Residency Training in Primary Care Objective Review. We note that the petitioner submitted an email dated October 21, 2006 from [REDACTED] who thanked the petitioner for his future participation at [REDACTED] on November 10, 2006, but failed to submit any documentary evidence reflecting that he participated at the poster symposium. Moreover, the petitioner submitted an email dated September 27, 2007 from [REDACTED] who sent the petitioner, along with other individuals, instructions and information for a review of a Seed Research Grant Review. While the petitioner submitted three evaluation forms of the Seed Research Grant, the documentary evidence fails to reflect that the petitioner actually reviewed the grant. Furthermore, the petitioner submitted an email dated February 8, 2008 from [REDACTED] who requested the petitioner to participate with the Predoctoral Training in Primary Care Objective Review Committee from March 5 – 7, 2008, but failed to submit any documentary evidence establishing that he served on this committee.

Nonetheless, the documentary evidence reflects that the petitioner’s claimed achievements as the judge of the work of others to be mainly with residents and students. The petitioner failed to submit evidence demonstrating that he judged acclaimed medical professors, scientists, or physicians rather than residents and students. Cf., *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). We cannot conclude that the petitioner’s participation as a reviewer of articles as part of a continuing education course and a student poster symposium 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). We note that peer review is a routine element of the process by which articles are selected for publication in scientific journals or for presentation at scientific conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of professors or scientists who publish themselves in scientific journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference, we cannot conclude that the petitioner is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Furthermore, a review of the credentials of the individuals who submitted reference letters on the petitioner's behalf demonstrates that there is stark contrast between their experiences and the claimed experience of the petitioner. Specifically, the references have the following experiences as judges:

1.

2.

3.

Investigation, Life Sciences, Obesity Research, Molecular and Cellular Endocrinology, Placenta, Prostaglandins, and Regulatory Peptides; Editorial board for *Journal of Endocrinology, Journal of Medical Primatology, Experimental Biology and Medicine, Biology of Reproduction, and American Journal of Primatology*; Ad hoc proposal reviewer for Contraceptive Development Branch (NIH), Minority Biomedical Research Support Program (NIH), March of Dimes, National Heart Lung, and Blood Institute (NIH), National Institutes of Child Health and Human Development (NIH); Regular member NIH reviewer for Diabetes, Endocrinology, and Metabolic B Subcommittee.

When compared to the petitioner, the petitioner's references have considerably distinguished themselves based on their editorial and review experience. We also determined that the petitioner met the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). A review of the documentary evidence reflects that the petitioner submitted four scholarly articles:

- 1.
- 2.
- 3.
- 4.

We note that the record contains two additional articles -

of

Care, July 2009). These articles were published after the filing of the petition on March 13, 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. 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. Again, however, when compared to the authorship of those in his field, the record reflects:

1. [REDACTED] authored 82 articles;
2. [REDACTED] authored 35 articles and 15 abstracts;
3. [REDACTED] authored 118 articles and 3 books;
4. [REDACTED] authored 20 articles, 1 book, and 14 abstracts;
5. [REDACTED] authored 19 articles, 4 abstracts, and 10 book chapters;
6. [REDACTED] authored 69 articles and 11 abstracts;
7. [REDACTED] – Authored 130 articles and 19 book chapters; and
8. [REDACTED] – Authored 142 articles, 4 books, and 224 abstracts.

Although the petitioner met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the minimal 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 science, 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 discussed, the petitioner submitted documentary evidence reflecting that his work has been independently cited 58 times. While these citations demonstrate some interest in his published 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.

As previously discussed, the petitioner also claimed eligibility based on approximately 40 presentations with the majority of them presented at [REDACTED]. When compared to the petitioner's references, however, the number and venue of the presentations by the petitioner's references are far above the accomplishments of the petitioner. For example:

1. [REDACTED] 54 presentations throughout the United States;
2. [REDACTED] 247 presentations throughout the United States including

3. [REDACTED] – 206 presentations throughout the United States and internationally.

Likewise, our finding that the petitioner failed to establish his leading or critical role pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) is supported by a comparison of the petitioner's roles with those of his references. The petitioner seeks to continue to work in the United States as an assistant professor and is [REDACTED]

[REDACTED] However [REDACTED] is the [REDACTED] [REDACTED] is [REDACTED] and [REDACTED] is the [REDACTED]

[REDACTED]. It appears that the petitioner serves in a far lesser role than his references.

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. 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 individuals 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008).

Finally, we 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). Although we found that the petitioner failed to establish eligibility for the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), we note that the petitioner failed to submit sufficient documentary evidence comparing his salary to others in his field of expertise. 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." As demonstrated by the accomplishments of those who submitted letters on his behalf, it appears that the highest level of the petitioner's field is far above the level he has attained. 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.