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

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

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

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's ultimate determination that the petitioner has not established her eligibility for the classification sought. In fact, we withdraw the director's conclusion that the petitioner has authored published scholarly articles as the record does not establish that the petitioner's work can be classified as "scholarly." Moreover, the petitioner has never indicated which of the five statutory fields, sciences, arts, education, business or athletics, includes her occupation, "animal intuitive." For the reasons discussed below, we find that the petitioner's occupation, which includes distance healing, crystal healing and animal communication through telepathy, does not fall under any of those statutory fields. In fact, the inability to fit the petitioner's occupation within any of the statutory fields raises concerns as to whether her entry into the United States would "*substantially* benefit prospectively the United States." (Emphasis added.) Section 203(b)(1)(A)(iii) of the Act.

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 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).

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). Counsel asserts on appeal that petitioner need only demonstrate acclaim, and not that she is within the small percentage who has risen to the very top of her field contradicts the regulations. The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

On appeal, counsel cites an unpublished, undated decision apparently issued by the AAO and federal district court decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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

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).

about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). 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 1119-20.

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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Alien's Field

As stated above, section 203(b)(1)(A)(i) provides that the alien must demonstrate extraordinary ability in the "sciences, arts, education, business, or athletics." Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). We must presume that the inclusion of five specific fields is not superfluous and, thus, has some meaning. *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) citing N. Singer, *Statutes and Statutory Construction* § 46.06, pp. 181-186 (rev. 6th ed. 2000); *Exxon Corp. v. Hunt*,

475 U.S. 355, 374 (1986). In other words, Congress could have merely stated that the classification was open to all aliens of extraordinary ability regardless of field, but did not. Instead, Congress expressly limited the fields that could qualify under this classification. While the fields are broad and general, Congress clearly did not intend this classification to apply to every individual with a popular following regardless of the occupation.

On the Form I-140 petition, the petitioner lists her proposed employment as "animal intuitive." The petitioner listed the occupational title code for animal trainers. The Department of Labor's Occupational Outlook Handbook (OOH) lists the following duties for animal trainers:

Animal trainers train animals for riding, security, performance, obedience, or assisting people with disabilities. Animal trainers do this by accustoming the animal to the human voice and human contact and teaching the animal to respond to commands. The three most commonly trained animals are dogs, horses, and marine mammals, including dolphins and sea lions. Trainers use several techniques to help them train animals. One technique, known as a bridge, is a stimulus that a trainer uses to communicate the precise moment an animal does something correctly. When the animal responds correctly, the trainer gives positive reinforcement in a variety of ways: offering food, toys, play, and rubdowns or speaking the word "good." Animal training takes place in small steps and often takes months and even years of repetition. During the teaching process, trainers provide animals with mental stimulation, physical exercise, and husbandry. A relatively new form of training teaches animals to cooperate with workers giving medical care: animals learn "veterinary" behaviors, such as allowing for the collection of blood samples; physical, x-ray, ultrasonic, and dental exams; physical therapy; and the administration of medicines and replacement fluids.

The record, however, does not support a finding that the petitioner performs the above services listed for animal trainers.

The record contains information from the petitioner's website, www.animalenergy.com. On her website, she indicates that she engages in distance healing by accessing an animal's "soul or spirit level," seeking the permission of the animal's "Higher Self" and carrying out question and answer sessions with the animal. The petitioner's introduction in the program of a conference where she spoke indicates that she utilizes flower essences and engages in crystal healing and color therapy. She defines flower essences as follows: "Vibrational frequencies of flowers captured in spring water and usually preserved with grain alcohol" and states that they are "actually the energy imprint of the petals of the flower." She also stated in these materials that her work "does not involve diagnosis and it is never a substitute for good Veterinary care." Her "biography" at the end of these materials indicates that she also utilizes "dowsing." Webster's II New College Dictionary 349 (3rd ed. 2008) defines dowsing as the use of "a divining rod to find underground water or minerals." The petitioner's articles on color therapy

end with the following disclaimer: "*Please Note:* Color therapy is never a replacement for good veterinary care."

The petitioner does not simply claim to empathize with animals as a trainer or to use complementary medicine as a trainer. Rather, she expressly claims paranormal abilities. For example, promotional material for one of the petitioner's seminars indicates that participants will practice "interspecies telepathic communication." An article about the petitioner [REDACTED] indicates that the petitioner also claims to communicate with clients' deceased pets. A book submitted to the record, [REDACTED] includes the petitioner's tips for communication with deceased pets.

The petitioner has certificates for Psychospiritual Practitioner Training, Spiritual Psychotherapy Training, Discovering the Total Self in Personal and Spiritual Development, Essential Oils, Brain Organization Profile, Basic Educational Kinesiology, Healing with Crystals – Level I, Equine Touch, Raw Food, Dowsing and Color Therapy. The petitioner attended these courses at the Transformational Arts Centre, an Educational Kinesiology Foundation event, an Essential Oils Integrated Aromatic Conference, the Crystal Alchemy Academy, the Equine Touch Foundation, the Canadian Society of Dowsing and the Colour Institute of Canada. While kinesiology is the legitimate study of muscles, the petitioner has not defined "educational kinesiology."²

While the petitioner claims to heal animals, which would normally fall under the medical sciences, she has never explicitly claimed that she enjoys national or international acclaim in the sciences. As discussed above, the petitioner's conference introduction and articles include disclaimers stating that her work does not substitute for proper veterinary care. These disclaimers reveal that she does not diagnose and treat animals through scientifically tested methods. The scientific method does not rely on anecdotal testimonials.³ The petitioner has not documented that any regionally accredited U.S. college or university includes a department of animal telepathy. The only journal the petitioner has documented in her occupation, [REDACTED] does not appear to be a peer-reviewed scientific publication. Rather, the inside cover indicates that the journal "provides a forum and network to share experiences, helpful hints, insights, humor, and the joy of deep understanding and heightened awareness with all beings." The lack of a peer reviewed

² According to the Educational Kinesiology Foundation's website, www.braingym.org/faq (accessed February 10, 2011 and incorporated into the record of proceeding), educational kinesiology "is the study of drawing out innate intelligence through natural movement experiences."

³ Clinical trials, research studies in which the safety and efficacy of treatments and therapies are tested in people, are essential for determining which treatments work, which do not, and why. See <http://nccam.nih.gov/research/clinicaltrials/factsheet/>, accessed February 10, 2011 and incorporated into the record of proceedings. In 2000, the director of the U.S. National Center for Complementary and Alternative Medicine (NCCAM) stated before a House Appropriations Subcommittee that credible, not anecdotal, data must be provided to the public. See <http://nccam.nih.gov/about/offices/od/directortestimony/030200.htm>, accessed February 10, 2011 and incorporated into the record of proceedings. Thus, this expert did not equate anecdotes to credible data.

publication covering the petitioner's occupation is not consistent with a conclusion that the petitioner works in the sciences.

We acknowledge that the petitioner offers courses by telephone. That the petitioner designed a course and found willing students does not create a presumption that she works in the education field. Rather, the petitioner must demonstrate that she works within the general accredited education framework. The petitioner did not provide evidence that the entities that issued her certificates are accredited academic institutions. As the record does not include any evidence that any regionally accredited institution in the United States offers animal telepathy as a major or as a significant part of a major in veterinary medicine or other department, we are not persuaded that the petitioner's occupation falls within the field of education.

We acknowledge that the petitioner runs her own website, composes a newsletter and offers telephone classes. While these activities arguably constitute a business, the petitioner does not claim to be acclaimed for her business achievements.

The petitioner is also not an athlete and does not coach or train athletes. Thus, her occupation does not appear to fit within athletics.

Finally, we note that the petitioner submitted promotional material for [REDACTED]. The materials contain the following disclaimer: "The program was created for entertainment purposes and is not intended to convey medical advice or other factual information." Thus, the occupation of the host of that show, [REDACTED], arguably falls within the performing arts. The petitioner, however, has not claimed eligibility as a performing artist.

Even if we were to use the Department of Labor's definition of "science or art" relevant to Schedule A Group II petitions, the regulation at 20 C.F.R. § 656.5(b)(1) defines "science or art" as "any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in that knowledge and/or skill." The record contains no evidence that colleges and university commonly offer courses leading to a degree in the petitioner's knowledge or skill set.

It is the petitioner's burden to establish that her occupation fits within one of the statutory fields and she has not attempted to do so. Conspicuously, counsel continually references all of the statutory fields throughout the proceeding, never specifying the relevant field. Because the petitioner's field of endeavor is not within one of the statutory fields, the petition may not be approved.

B. Evidentiary Criteria⁴

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

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.

The petitioner submitted articles that briefly quote or mention her in [REDACTED] and [REDACTED] in her book [REDACTED] includes a section of the "Afterword" section discussing the petitioner's steps for communication with deceased pets. The petitioner also submitted articles that she has authored. Articles that briefly mention or quote the petitioner or that she has authored are not "about" the petitioner relating to her work and cannot meet the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii). [REDACTED] published her book after the date of filing. Thus, we cannot consider this evidence. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, without evidence of book sales, the petitioner cannot establish that [REDACTED] book constitutes a professional or major trade publication or other major media.

The petitioner lists several television and radio appearances on her self-serving website. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). In support of these claims, the petitioner submitted several letters. [REDACTED] productions, asserts that he taped interviews of individuals claiming to engage in the paranormal and that the footage "will be used in a reality based documentary special that we anticipate will be sold to a TV or cable network." [REDACTED] letter is dated in 2004. The record contains no evidence that a TV or cable network purchased and aired the documentary. Moreover, the record does not establish that the documentary was "about" the petitioner rather than about several individuals claiming paranormal abilities.

[REDACTED] Channel 18's "Animal Tails: All About Animals," asserts that the petitioner appeared on his show in 2004. The record does not reflect that this program is nationally broadcast.

[REDACTED] asserts that in 2002, [REDACTED] "a reality based show documenting the lives of people who own, train and handle show dogs." [REDACTED] confirms that the documentary aired on the Life Network in Canada. [REDACTED] does not indicate how much of an episode or the documentary as a whole featured the petitioner. The promotional materials indicate that the show covered those who work with dogs "from beauticians to hardcore handlers." Thus, we cannot determine whether this documentary constitutes published material "about" the petitioner.

Initially, the petitioner submitted a page from www.blogtalkradio.com listing a call-in number for the petitioner's show. The record contains no evidence that this program is anything other than a self-

promotional web-based "radio" show with airwave broadcast.⁵ The page lists five listeners. In response to the director's request for additional evidence, the petitioner submitted a May 4, 2009 email from [REDACTED] and [REDACTED] thanking the petitioner for appearing on the "internationally-heard radio show, 'Beyond Worlds.'" This evidence postdates the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, we need not accept the promotional materials of a media outlet as to whether it constitutes a professional or major trade journal or other major media.⁶ Accessibility on the Internet says nothing about the show's actual listener base and, thus, is insufficient.

The petitioner submitted an August 2007 article about her in [REDACTED] an undated article about her in *Victoria News*, a 2002 article that discusses the petitioner and her work at length [REDACTED]. The banner for [REDACTED] proclaims that the newsletter is "Toronto's Favourite Newspaper." As stated above, we need not accept promotional materials of a media outlet as to whether it constitutes a professional or major trade journal or other major media. The record does not contain the circulation data for [REDACTED] or other evidence that the publication could be considered a professional or major trade journal or other major media. Rather, it appears to be a local Toronto publication.

Finally, the petitioner submitted the results for a search on www.google.com. Not every reference to the petitioner on the Internet can be considered published material about the petitioner in professional or major trade journals or other major media. The petitioner must document material that is primarily about her and the significance of the publication, including Internet sites. We will not presume that every Internet site is a professional or major trade journal or other major media. Rather, the petitioner must provide information about the individual site.

The director accepted that the article in the *Toronto Star* was "about" the petitioner and appeared in major media but concluded that this single article was not evidence of "sustained" acclaim. Counsel does not challenge this conclusion on appeal.

We are not persuaded that the article in *The Toronto Star* is "about" the petitioner. Regardless, we concur with the director that a single qualifying article cannot serve to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), which requires published material in qualifying publications in the plural.

⁵ According to the website www.blogtalkradio.com/whatis.aspx (accessed February 10, 2011 and incorporated into the record of proceedings), the website "allows anyone, anywhere the ability to host a live, Internet Talk Radio show, simply by using a telephone and a computer." The website does not suggest that the operators vet and select potential hosts.

⁶ See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The use of the plural in 8 C.F.R. § 204.5(h)(3)(iii) is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.⁷

In summary, the majority of the material is not "about" the petitioner. The petitioner has not demonstrated that the remaining material appeared in professional or major trade publications or other major media. For these reasons, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

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

The director concluded that the petitioner had not impacted the practice of animal communication or that she has set a standard to which others aspire. On appeal, counsel focuses on the word "original" and asserts that the plain language of the regulation at 8 C.F.R. § 204.5(h)(c)(v) does not require evidence that the petitioner's work has been "copied or held up as an industry standard."

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Moreover, the contribution must be to a field as a whole. Work that is "original" in that it does not duplicate the work of others but that has had no influence in the field cannot be considered a contribution of *major significance to the field*.

Also according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must demonstrate original contributions of major significance that are "scientific, scholarly, artistic, athletic or business related." As discussed at length above, neither counsel nor the petitioner has ever explained which of these fields includes her occupation. Similarly, in discussing this criterion, counsel never specified whether the petitioner's contributions are scientific, scholarly, artistic, athletic or business related.

For the reasons discussed below, we concur with the director that the petitioner has not demonstrated her impact in the occupation of animal psychic. That said, defining the petitioner's field so narrowly

⁷ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

is problematic. Specifically, the petitioner cannot avoid having to demonstrate the type of field-wide impact required under 8 C.F.R. § 204.5(h)(3)(v) by narrowing her "field" to a niche occupation with relatively few practitioners. As discussed above, the petitioner's activities do not appear to fit within the SOC code occupation the petitioner listed on the petition, animal trainers. Nevertheless, it is the only field the petitioner has ever claimed.

The record contains evidence that the petitioner has authored articles in [REDACTED]

[REDACTED] er for the publisher of *Animal Wellness*, *Feline Wellness* and *Equine Wellness*, states that the magazines have a readership of over one million. At issue for consideration under 8 C.F.R. § 204.5(h)(3)(v), however, is whether these articles have ultimately impacted the field. The petitioner has not submitted citations or other evidence of the impact her articles have had in the field of animal telepathy once disseminated.⁸

The petitioner lists several speaking engagements on her self-serving website. As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, I&N Dec. at 190). The petitioner submitted evidence that she has lectured at the Ontario Association of Veterinary Technicians (OAVT) 25th Annual Conference in 2003. A handwritten note on a single evaluation of her lecture indicates that her lecture "sold out." The petitioner submitted an unsigned letter purportedly from Bobbi Hoffman, Conference Secretariat, asserting that 1,000 delegates attended the conference. An unsigned letter has no evidentiary value. Regardless, this letter does not suggest all 1,000 delegates attended the petitioner's lecture. In fact, a registration form for the event in the record reflects the petitioner's lecture was limited to 30 participants. Also in 2003, the petitioner also gave a seminar presented by Speaking of Dogs. [REDACTED] where the petitioner now lives asserts that the petitioner spoke at the bookstore in 2006 and 2007. [REDACTED] confirms that the petitioner drew "above average crowds" for each talk. An email from "Kris & Joe Neri" confirms that the petitioner also spoke at another bookstore in Arizona in 2007.

As stated above, the petitioner also submitted a page from www.blogtalkradio.com listing a call-in number for the petitioner's web-based "radio" show. The page lists five listeners. The record contains no evidence that was broadcast by airwaves such that anyone not connected through the Internet could have listened.

Counsel asserts that the petitioner has taught "thousands" of people worldwide through her "teleclasses" and in person workshops. Counsel has also asserted that the petitioner's compact disc has sold well.

⁸ Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

The 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). The petitioner submitted compact discs for several courses she sells and pages from her website that advertise her courses. *Species Link: The Journal of Interspecies Telepathic Communication* reviewed the petitioner's compact disc. We note that Penelope Smith, with whom the petitioner trained, is the editor of this journal. The petitioner's self-serving website also includes several testimonials from former students. This evidence does not establish the number of compact discs the petitioner has sold or the number of students who have taken her courses.

As discussed above, the record contains references to the petitioner in various publications, articles about the petitioner in publications with an undocumented distribution and circulation and evidence that the petitioner appeared in a documentary entitled "Going to the Dogs" that appeared on the Life Network in Canada. In response to the director's request for additional evidence, the petitioner submitted email requests to interview the petitioner. The record does not establish whether interviews other than those discussed above actually took place.

The petitioner also submitted her 123-page manuscript, [REDACTED].
[REDACTED] The document bears no indicia of publication.

Finally, the petitioner submits testimonials. Officials at two veterinary hospitals attest to the petitioner's positive impact on their work. A nurse and a minister provide general praise of the petitioner's abilities.

The petitioner also submitted a letter from [REDACTED], a licensed psychologist who claims no training in physics but also claims to have conducted research using "the work of [REDACTED] including the work of [REDACTED]," to "substantiate that everything is energy, that energy does not die and that love is eternal." [REDACTED] praises the petitioner's abilities and asserts that she refers clients who request an animal communicator to the petitioner.

[REDACTED], a Training and Mentor coach and a professor of psychiatry at Baylor College of Medicine, praises the petitioner's abilities as a "professional coach." The petitioner, however, does not seek to enter the United States to work as a professional coach, but as an animal intuitive.

[REDACTED] asserts that the website chose the petitioner to write a column based on her "outstanding reputation and her remarkable abilities." While [REDACTED] asserts that the website would not want to lose the petitioner's contributions if the petitioner cannot remain in the United States, we note that the petitioner contributes to the website from a different state and could presumably do so from her home country. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires contributions to the field as a whole, not one website.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction

of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁹ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain vague claims of paranormal abilities without specifically identifying contributions and providing specific examples of how those contributions are scientific, scholarly, artistic, athletic or business related or rise to a level consistent with major significance in any identified field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.¹⁰ The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not established that she has made scientific, scholarly, artistic, athletic or business related contributions of major significance to an identified field as required under 8 C.F.R. § 204.5(h)(3)(v). Thus, she has not submitted qualifying evidence that meets the plain language requirements of that regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

⁹ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

¹⁰ *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.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Neither the petitioner nor counsel previously claimed that the petitioner meets this criterion. Nevertheless, as stated above, the petitioner has authored articles in [REDACTED]

[REDACTED] The director accepted that the petitioner had submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi). We withdraw that conclusion. The petitioner's articles appear to be autobiographical rather than scholarly treatises. The petitioner includes disclaimers in some of her articles. More specifically, her articles state conclusions (such as the healing properties of various colors) based on her personal experiences, contain no footnoted references to other scholarly works and have not appeared in peer-reviewed scholarly journals. Even if we were to consider the reception of these articles in the scholarly community, the record contains no evidence that the petitioner's articles have attracted *scholarly* attention.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel has asserted that the petitioner meets this criterion through her media coverage, radio and other media appearances, lectures and articles. While neither counsel nor the petitioner expressly requested that this evidence be considered "comparable" evidence under this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4), the director concluded that the evidence was not comparable to the public appreciation nature of an artistic exhibit. On appeal, counsel asserts that the director erred by examining the nature of the showcase, which is not a requirement set forth at 8 C.F.R. § 204.5(h)(3)(vii).

By its plain language, the regulation at 8 C.F.R. § 204.5(h)(3)(vii) applies solely to the arts. The petitioner has never claimed that her occupation falls within the arts. Thus, this criterion is inapplicable to the petitioner.

The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where the standards set forth at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the petitioner's occupation. We agree that the regulation at 8 C.F.R. § 204.5(h)(3)(vii) is not readily applicable. Thus, at issue is whether the evidence is "comparable."

The articles mentioning the petitioner and the articles about her in publications that are not professional or major trade journals or other major media directly relate to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and have been considered in that context. We also considered the television and radio appearances under that criterion. We note that the petitioner was not performing as the host of these programs but the subject of the host's investigative inquiry, which is more akin to published material than a showcase or exhibition. We will consider the petitioner's web-based "radio" show below. We are not persuaded that evidence that falls short of meeting that criterion must be considered "comparable" to a separate, inapplicable criterion. To hold otherwise would render meaningless the

statutory requirement for extensive evidence and the regulatory requirement that any published material be about the petitioner and appear in professional or major trade publications or other major media.

Similarly, the petitioner's articles relate to 8 C.F.R. § 204.5(h)(3)(vi). Once again, the fact that they do not fulfill that criterion because they are not "scholarly" does not create a presumption that they must be considered comparable evidence under a separate, inapplicable criterion. To hold otherwise would render meaningless the regulatory requirement for published *scholarly* articles and the statutory requirement for extensive evidence. Moreover, we are not persuaded that a magazine is a showcase or exhibition.

Further, the petitioner's lectures do not appear comparable to artistic showcases and exhibitions. We concur with the director that artistic showcases and exhibitions are designed for public appreciation rather than teaching self-help techniques or providing therapy. Counsel concludes that because artists showcase their work at exhibitions, individuals in other occupations "showcase" their work whenever they appear in public. For example, counsel asserts that motivational speakers "showcase" their work at industry forums. Counsel's comparison is not persuasive. We will not remove the public appreciation aspect from this criterion, even when considering claims of "comparable" evidence. To hold otherwise would be to conclude that every member of an occupation that normally interacts with the public would inherently meet this criterion. For example, not every teacher is "displaying" her work at a showcase or exhibition every time she teaches a course that is open to the public.

Unlike an artistic exhibition or showcase, the record contains no evidence that the founders of www.blogtalkradio.com select the hosts for "display" in exhibitions or workshops. The petitioner's 2008 web-based radio show is akin to a lecture and appears to be promotional rather than evidence that the organizer of an exhibition or showcase selected her work for display.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(vii) and has not satisfactorily demonstrated why evidence insufficient to meet other applicable criteria should be considered "comparable" under 8 C.F.R. § 204.5(h)(3)(vii).

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

Initially, counsel asserted that the petitioner "has worked extensively with some of the top networks and companies in the film and television industry both in Europe and the United States." In response to the director's request for evidence to support this claim, counsel asserted that the petitioner has performed in a leading or critical role for Penelope Smith, whose website lists the petitioner as a referral. Counsel repeats her initial assertion and references emails from media outlets inquiring about one-time appearances on various programs. As stated above, the record lacks evidence that the petitioner actually appeared on many of these programs. On appeal, counsel reiterates the assertion that the petitioner's role for [REDACTED] meets this criterion and notes letters from the producers of

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Counsel has never expressly challenged the director's implication in the request for additional evidence that one-time appearances on a radio show or television network is not a leading or critical role for that radio station or television network. We find that such limited roles are not leading or critical for an organization or establishment as a whole.

asserts that the petitioner plays a critical role for the website Animalinks.com. While asserts that the petitioner is "the most popular draw for return viewers," the record contains no evidence regarding the number of viewers for this site or data suggesting that viewership increased when the petitioner began writing for the site.

In a separate letter dated after the petitioner filed the that the petitioner has a leading role in "the national television series Animalinks." further indicates the show is in "preproduction." The record contains no evidence that this show was already a distinguished organization or establishment as of the date of filing, the date as of which the petitioner must establish her eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

asserts that the petitioner trained with in 2000, that considers the petitioner "a gifted and unique Animal Communicator" and that Ms. Smith chose the petitioner to list "on my own website for referrals and media contact." While has published three books, the record contains no evidence that is individually a distinguished organization or establishment. Even if we accepted that is an organization or establishment with a distinguished reputation, we are not persuaded that the listing of the petitioner's name on website demonstrates that the petitioner plays a leading or critical role for . A leading role should be apparent from the petitioner's title, how the role fits within the organization's hierarchy and duties. A critical role should be apparent from the petitioner's impact on the organization. The record contains no such evidence.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Neither the petitioner nor counsel has claimed that the petitioner meets this criterion. While we acknowledge counsel's assertion that the petitioner has sold a large number of compact discs, the record lacks evidence of actual disc sales. Thus, the petitioner has not submitted the initial evidence required under 8 C.F.R. § 204.5(h)(3)(x).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

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." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20.

The evidence of record in the aggregate is not persuasive that the petitioner enjoys national or international acclaim. The petitioner's lectures were limited to a regional conference for Ontario-based veterinary technicians and, most recently, at local libraries. The published material that appears in the most significant publications are not primarily about the petitioner and the most persuasive article, appearing in the *Toronto Star*, predates the petition by several years and, thus, is not evidence of sustained acclaim in 2008 when the petitioner filed the petition. Occasional radio appearances cannot demonstrate sustained acclaim. The petitioner has not documented the nature of her television performances. The claim that she will appear in a leading role for what is only anticipated to be a nationally televised program appears highly speculative. The petitioner's articles are not scholarly and the petitioner has not demonstrated the impact of these articles, some of which contain disclaimers. We acknowledge that the petitioner has clients beyond her locality. Successfully attracting clients from more than one state is not evidence of national or international acclaim.

Even in the petitioner's limited field of animal intuitives, the petitioner does not appear to be among the small percentage at the top of her field. [REDACTED] hosts a nationally televised show on Animal Planet that has a large fan base and has authored a book. [REDACTED] has published three books.

III. Substantial Prospective Benefit to the United States

Section 203(b)(1)(A)(iii) requires a showing that the alien's entry into the United States will substantially benefit prospectively the United States. We acknowledge that there are no regulatory evidentiary requirements for this provision. In many cases, the alien's substantial prospective benefit is readily apparent from the alien's sustained acclaim in one of the fields specified by Congress. That

said, it is the petitioner's burden to meet every statutory requirement. Moreover, as discussed above, the petitioner has not established that her field falls within one of the statutory fields.

The petitioner conducts both her classes and her animal communications by telephone. As such, it is not clear why the petitioner's presence in the United States would provide any benefit. Moreover, paranormal abilities are inherently untestable. The petitioner includes disclaimers on her website and some of her articles. Without judging the petitioner's claims of paranormal abilities, accepting that inherently untestable abilities could substantially benefit the United States prospectively opens the door to claims of expertise in highly questionable areas.

IV. Conclusion

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

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.