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



U.S. Citizenship
and Immigration
Services

B2

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

FEB 17 2011

IN RE:

Petitioner:

Beneficiary:

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 September 18, 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 her sustained national or international acclaim.

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

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

I. Law

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 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:

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).

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).

II. Translations

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

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

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

III. Analysis

A. Evidentiary Criteria

This petition, filed on February 2, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a scholar/researcher. The petitioner has submitted evidence pertaining to the following criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).²

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

None of the articles submitted into evidence are primarily about the petitioner as opposed to citing the results of her research. The articles do not specifically focus on the petitioner or her work or include any information about her.

On appeal, the petitioner argues:

[T]he set-up is a straw-man set-up: the director presents my evidence under the label of "citations" . . . which is to say under the guise that "citations" are equivalent to writings by others about me and my work. However, since "citations" are clearly not "published material," as the regulatory criterion

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

requires, my specific evidence can thus be dismissed without having actually been considered as such.

* * *

It is the Director's decision which is written such that it "do[es] not specifically focus on the petitioner or her work or include any information about her." That is, it is the Director (not me or the "articles") who does not relate what he alleges that I have done to any specific objective, independent, pre-existing evidence in the record (which evidence, to be independent of the Director's rendering of it, must be other than the Director's own words, i.e., it must take the form of actual, pertinent quotations/citations but these are entirely missing from the text of the Director's decision).

The Director, it is clear by now, has proven nothing about my evidence. Rather, the structure of his argument reveals his reasoning as a *petitio principio*, for the conclusion appears twice in it, at the beginning as something which is (or parts of which are) apparently in question (but actually already predetermined) and at the end as something that is fully negated. Given the set-up [sic] identified above, this very structure makes the Director's reasoning doubly fallacious.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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 [emphasis added]." In other words, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. Articles authored by the petitioner, or articles which cite or critique the petitioner's work, are not articles about the petitioner relating to her work. Therefore, we agree with the findings of the director. Thus, while her publications and citations therein are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner's original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v) and authorship of scholarly articles under the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

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 reflecting her peer and manuscript reviews 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 she 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 she 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.

In the director’s decision, he found that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scholarly-related contributions “of major significance in the field.”

A review of the record of proceeding reflects that the petitioner submitted documentary evidence regarding the citation of her work by others. However, the majority of the petitioner’s documentation reflects uncertified translations, partial translations, and foreign language documents without any translations, let alone certified translations. We also note that numerous translations fail to identify the specific works of the petitioner that were cited in the articles mainly because the petitioner only submitted partial translations. For example, the partial translation of “Patterns Without Value: On the Functionalization and Marginalization of the Pattern Dissertation” claims:

English translation of the relevant passages:

p. 162:
“Freed from the burden

p. 163:
of symbolizing something, or rather, never charged with meaning in its capacity as an ornament, the arabesque assumes a referential character.¹⁵⁹

¹⁵⁹ Gumbrecht/Pfeiffer (1993): p. 106.

There is no indication that the work is credited to the petitioner, let alone the name of the petitioner’s work that was cited. We further note some of the translations contained comments that do not appear to be in the original document that was translated. For example, the partial translation of “Representation” contains a commentary note by the translator claiming:

[Note: Instead of summarizing the existing research on the so-called “crisis of representation” in his own words, indicating borrowed phrases by quotation marks, and then referencing his sources, the author, [REDACTED] has directly taken over the very words and ideas of the beginning of [REDACTED] article on the “crisis of representation” in the German-language Historical Dictionary of Philosophy.]

While the translation is both uncertified and partial, the translator clearly failed to provide a “complete and accurate” translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3) as the translator made unsupported claims in the partial translation. Because the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner’s claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Therefore, we will only evaluate the petitioner’s documentary evidence that clearly establishes that her work was cited by others in the field. A review of the record of proceeding reflects that her work was cited approximately 32 times by others in her field. The petitioner’s two most cited articles are [REDACTED] and [REDACTED]. Again, while the petitioner’s work may have been cited more than 32 times, we can not evaluate the petitioner’s documentary evidence that fails to comply with the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, without documentary evidence that clearly reflects the citations of the petitioner’s work by others, we will not infer or second-guess the documentary evidence before us.

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 32 citations, as well as 11 and 10 each for the two most cited articles, is reflective that the petitioner’s work has been majorly significant to the field. Furthermore, as the petitioner only submitted partial and selected translations of the articles that cited the petitioner’s work, as well as some articles in the English language, the petitioner failed to establish that the articles that cited the petitioner’s work have 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 a major significance in the field. We are not persuaded that the citations of the petitioner’s articles are reflective of the significance of her work in the field. The petitioner failed to establish how those findings or citations of her work by others have significantly contributed to her field as a whole.

A further review of the record of proceeding reflects that the petitioner submitted documentary evidence reflecting that she participated in approximately 19 conferences and meetings by

presenting her papers. Again, while the presentation of the petitioner's papers 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 various conferences and meetings 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. In fact, the record contains several letters from individuals who merely confirm that the petitioner participated at the venues by presenting her papers. The petitioner failed to establish, for example, that the presentations were of major significance so as to establish their impact or influence beyond the audience at the conferences.

Finally, the petitioner submitted recommendation letters from several individuals. While the recommendation letters praise the petitioner for her work as a scholar in literature and indicate her original findings, they fail to indicate that her 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]

[REDACTED] discussed the petitioner's contributions to [REDACTED]. The Example of [REDACTED] While [REDACTED] "has been among the top selling publications of [REDACTED] in recent years," we are not persuaded that the sales of a single press entity reflect the significance of the petitioner's work beyond [REDACTED]. Moreover, while [REDACTED] indicated that the petitioner has a "rare, rich and varied educational and academic background" and "[t]his knowledge and the international scope and depth of her research have enabled her to bring a unique and important perspective to [REDACTED]" he failed to indicate that the petitioner has made original contributions of major significance to the field. Assuming the petitioner's skills are unique, that issue properly falls under the jurisdiction of the Department of Labor. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I & N Dec. 215, 221 (Commr. 1998).

Henry Carrigan, Jr. , Senior Editor at Northwestern University Press,

I am extremely interested in [the petitioner's] present research on the theories of human thought proposed by [REDACTED] two of the most intricate thinkers in Western intellectual history. [The petitioner's] account of an interior *logos* or *ratio* as the basis of our notion of rationality, which is exemplary in its comprehension and clarity, strikes me as groundbreaking; it would be very well placed in the philosophical book series at Northwestern University Press. [The petitioner's] published work and contributions of significance to her field result from her rare expertise and extraordinarily detailed, well crafted writing. In all of her work, she has made significant contributions to the academic community, adding to the base of knowledge in various topics, including Austrian literature, silence and language, in an accessible fashion that

both offers new insights to the reader and demonstrates her deep expertise and scholarly research methods of research.

Again, [REDACTED] failed to specifically identify any original contributions of major significance to the field. Instead, [REDACTED] expressed his personal interest in the petitioner's work, speculated that her work could be placed in a book series, and generally indicated that the petitioner "made significant contributions to the academic community" without explaining the original contributions and how they have been of major significance to the field.

[REDACTED] described the petitioner's work as "revolutionary," "groundbreaking," "of extraordinary importance," and "of enormous significance." However, while [REDACTED] discussed the petitioner's research relating to [REDACTED] they failed to indicate that her work has been of major significance to the field. For example, they failed to provide any specific examples of how the petitioner's work has influenced or impacted the field in a significant manner. Similarly, although [REDACTED] indicated that the petitioner's research is significant to "understanding of intercultural transmission," he failed to identify a single example where the petitioner's work has been applied in the field. [REDACTED] stated:

[The petitioner] has broken new ground with her innovative approach to the analysis of translation – its logic *can* readily be adopted by other researchers in a search for new understandings of the relation between the translation of any literary work and its original source text. What is more, [the petitioner's] paradigmatic insights are immediately applicable to translation pedagogy, contributing to the process of training young translators to work at a high level of expertise [emphasis added].

[REDACTED] failed to indicate that others in the field have applied or are currently utilizing the petitioner's "innovative approach." Instead, [REDACTED] refers to the petitioner's work in future applicability and possibility. Likewise, [REDACTED] stated that the petitioner's "work is not derived, but original, and thus holds out *prospects* for creative cross pollinations between such disciplines as philosophy, mathematics, and literary studies, to name a few [emphasis added]." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's work is likely to be influential is not adequate to establish that her findings are already recognized as major contributions in the field. Moreover, while [REDACTED] stated that the petitioner's "paradigmatic insights are immediately applicable to translation pedagogy," she failed to indicate if they actually been applied by others throughout the field. In addition, [REDACTED] failed to indicate

that the petitioner's work is currently be used in the field; instead [redacted] stated that the work "holds out prospects."

The petitioner also submitted recommendation letters that discussed the petitioner's contributions to the references in the letters but failed to indicate that the petitioner made original contributions of major significance to the field. For example, [redacted] discussed the petitioner's assistance in translating the work of [redacted] [redacted] discussed the petitioner's contributions to [redacted]

[redacted] stated that "I have greatly benefited from her published research regarding the crisis of representation, and even if I have not always referenced this influence it has been a constant grounding for my understanding of the field of representation studies."

[redacted] stated that "I wrote as a testimony of its significance for my own work and its relevance for future research in the humanities in Brazil."

[redacted] stated that the petitioner's "essay on [redacted] principle of translation exemplifies . . . [i]t is to awakening this very understanding in the public that my life's work is dedicated."

[redacted] stated that "I have drawn attention to [the petitioner's] important findings in my essay [redacted]

[redacted] stated that "[y]ou will find [the petitioner's] work cited in my [redacted]

[redacted] While the petitioner's references are impressed with her work and discussed the original contributions of the petitioner, as well as citing her work in their own work, they failed to provide sufficient information establishing that her work is of major significance beyond their own work.

Finally, the petitioner submitted reference letters that briefly discussed the petitioner's authorship of scholarly articles. For example, [redacted]

discussed the petitioner's article, [redacted] Although Dr. Gumbrecht indicated that the petitioner's articles "have become standard reference pieces on their respective topics," and [redacted] stated that "I know of several courses on the "crisis of representation" that have been taught by colleagues at German universities over the last years," they failed to provide specific information such as identifying a single reference or university that has offered courses on the petitioner's work.

While those familiar with the petitioner's work describe it as original and generally state that it is 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.³ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

³ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyrr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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.

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. Without extensive documentation showing that the petitioner's work has been unusually influential or widely accepted throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

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

In the director's decision, although he found that the petitioner published articles in academic and literature journals, he found that the petitioner failed to establish eligibility for this criterion as the petitioner's work was not cited extensively by others. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that she 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 she meets the plain language of the regulation for this criterion.

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

At the time of the original filing of the petition, the petitioner's counsel claimed her eligibility based on the presentation of her work at conferences. We note that counsel did not address this criterion in response to the director's request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). Moreover, the petitioner did not address this criterion on appeal. Accordingly, we consider that issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2

(11th Cir.2005). We note that the petitioner's presentations at conferences were previously discussed under original contributions criterion.

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner met the plain language of the regulation for two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has authored some scholarly articles, made presentations at conferences and meetings, served as an editor and reviewed manuscripts, and has had her work cited by others in the field. However, the accomplishments of the petitioner fall far short of establishing that she "is one of that small percentage who have risen to the very top of the field of endeavor" and that she "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 submitted documentary evidence reflecting that she served as an editor

Literature in 1994, reviewed two manuscripts for [REDACTED] served as a reviewer the [REDACTED] and served as a reviewer and examiner for two of [REDACTED] graduate students. We note here that the petitioner submitted several documents claiming that they established her participation as a judge of the work of others, but a review of the documentary evidence fails to sufficiently establish that she judged the claimed material. For example, the petitioner submitted a letter from [REDACTED] who stated that the petitioner “has been frequently sought out as a panelist to judge the work of other scholars” and “has served on three hiring committees that demand judgment of the work of others.” [REDACTED] letter lacks any specificity demonstrating that the petitioner has judged the work of others. [REDACTED] failed to indicate who “sought out the petitioner,” what the petitioner reviewed, and the responsibilities of the petitioner on the hiring committees. The petitioner also submitted a letter from [REDACTED] who thanked the petitioner for “agreeing to evaluate [REDACTED].” However, the petitioner failed to submit documentary evidence establishing that she actually reviewed [REDACTED]. Similarly, the petitioner submitted samples claiming that she reviewed the articles but failed to submit independent, objective evidence demonstrating that she actually reviewed the articles.

Nonetheless, the documentary evidence reflects that the petitioner’s claimed achievements as the judge of the work of others to be, in part, the work of students. The petitioner failed to submit evidence demonstrating that she 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 minimal participation as a reviewer of students demonstrates a level of expertise indicating that she is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, we note that peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at literary 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 scholars who publish themselves in 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 her field, such as evidence that she 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. For example, the references have the following experiences as judges:

1.

2.

3.

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 six scholarly articles. We note that the petitioner also submitted an additional six articles without any English language translations, let alone certified translations. Furthermore, the petitioner submitted an additional 15 documents reflecting her translations of the works of others. Again, however, when compared to the authorship of those in his field, the record reflects:

1.

2.

3.

4.

5.

Although the petitioner met the plain language of the regulation through her co-authorship and authorship of scholarly articles, she has not established that the moderate publication of such articles demonstrates a level of expertise indicating that she is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to scholars, we will evaluate a citation history or other evidence of

the impact of the petitioner's articles to determine the impact and recognition her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. 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 her work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that her work has been independently cited 32 times. While these citations demonstrate some interest in her published work, they are not sufficient to demonstrate that her articles have attracted a level of interest in her field commensurate with sustained national or international acclaim at the very top of her field.

As previously discussed, the petitioner also submitted documentary evidence reflecting approximately 19 presentations at conferences and meetings. However when compared to the petitioner's references, the number of the presentations by the petitioner's references are far above the accomplishments of the petitioner. For example:

1. [REDACTED] – 33 presentations;
2. [REDACTED] 49 presentations;
3. [REDACTED] 43 presentations; and
4. [REDACTED] – 110 presentations.

As indicated previously, the petitioner submitted numerous recommendation letters. 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, especially when they are colleagues of the petitioner without any prior knowledge of the petitioner's work, 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). In this case, the record of proceeding reflects uncertified translations, partial translations, and foreign language documents without any English translations. We are

not persuaded that such evidence with the numerous deficiencies noted equate to “extensive documentation” and is demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r. 1989).

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff’d*, 345 F.3d at 683; *see also 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.