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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

32

FILE:

Office: TEXAS SERVICE CENTER Date:

FEB 28 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, Texas Service Center, on October 15, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

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

I. Law

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

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

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

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

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

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

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

A. Evidentiary Criteria

This petition, filed on March 16, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an analyst in power systems economics and intelligent systems applications. The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3).²

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 his peer reviews for journals failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Pursuant to *Kazarian*, 596 F.3d at 1121-22, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

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

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

In the director's decision, he concluded that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues that the petitioner demonstrated eligibility for this criterion based on his "record of publication in impressive journals," "numerous conference presentations," "impressive and numerous citations of his work," and "statements of many independent experts and requests to serve as a reviewer."

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

As it relates to counsel's reference to requests for the petitioner to serve as a reviewer to meet this criterion, the regulations contain a separate criterion regarding the participation as a judge of the

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

work of others. 8 C.F.R. § 204.5(h)(3)(iv). Furthermore, as it relates to counsel's reference to the petitioner's published articles as evidence to meet this criterion, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the judging criterion and publication of scholarly articles criterion are presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner's judging and authorship of articles will not be considered under this criterion, the judging criterion has already been addressed above in the previous criterion, and the authorship of articles criterion will be addressed under the next criterion.

Regarding the citations of the petitioner's work by others, at the time of the filing of the petition, the petitioner submitted documentary evidence from [REDACTED] as well as articles that cited the petitioner's work, reflecting that his work was cited 40 times. Specifically, the record of proceeding reflects the citation of the petitioner's following articles from [REDACTED]

1. "An Unconditionally Stable Three Level Finite Difference Scheme for Solving Parabolic Two-Step Micro Heat Transport Equations in a Three-Dimensional Double-Layered Thin Film" – Ten citations;
2. "Integral Square Generator Angle Index for Stability Ranking and Control" – Nine citations;
3. "Day-Ahead Electricity Price Forecasting in a Grid Environment" – Eight citations;
4. "State-of-the-Art of Electricity Price Forecasting" – Five citations;
5. "Fast Load Shedding for Angle Stability" – Three citations;
6. "On the Stability of the FDTD Method for Solving a Time-Dependent Schrodinger Equation" – Two citations;
7. "A Domain Decomposition Method for Solving the Pennes' Bioheat" – Two citations; and
8. "Forecasting Transmission Congestion Using Pay-Ahead Shadow" – One citation.

We note that the petitioner failed to submit any documentary evidence reflecting that two of the petitioner's other articles, "A Finite Difference Scheme for Solving Parabolic Two-Step Micro-Heat Transport Equations in a Double-Layered Micro-Sphere Heat by Ultrashort-Pulsed Lasers" and "An Intelligent System for Price Forecasting Accuracy Assessment," have ever been cited by others. We also note that in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted updated [REDACTED]

screenshots reflecting that the petitioner's work has been cited 47 times. Based on a review of the screenshots, the petitioner failed to establish that the seven additional citations were in articles that were published prior to the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 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.

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 40 citations, as well as ten citations for the most cited article, is reflective that the petitioner's work has been of major significance in the field. Furthermore, a review of the submitted articles that cited the petitioner's work fail to reflect that the petitioner's work has been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

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

Finally, the petitioner submitted several recommendation letters. While the recommendation letters praise the petitioner for his work and indicate his original findings, they fail to indicate that his contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For example:

stated:

In his research, [the petitioner] proposed to apply a transparent and interpretable intelligent systems algorithm for electricity price forecasting. This systematic approach is a significant accomplishment in this field. It has extensive application potential for electricity power markets, such as market participants' bidding strategies and market operators' monitoring activities. It is an original contribution to the field of power system economics.

* * *

Electricity price forecasting is on the verge of becoming a highly demanded tool in electricity markets, but is not yet extensively accurate or interpretable for use. One main problem is that electricity market prices are highly volatile and vulnerable to various kinds of physical transmission constraints, such as transmission facility outages and extreme high load conditions. Another problem is the demand for an appropriate forecasting technology to interpret reasoning from forecasting inputs. [The petitioner] has proposed new techniques and developed innovative applications.

[The petitioner] proposed a series of promising techniques in electricity price forecasting. For instance, he proposed a new Fuzzy Inference System algorithm to perform the forecasting of electricity prices with a higher accuracy, transparency, and interpretability than other existing methods.

Although [redacted] discussed the petitioner's original work, [redacted] failed to indicate that the petitioner's work has been utilized in the field so as to establish that it is of major significance. Instead, [redacted] indicated that the petitioner "proposed" techniques and applications. Furthermore, in describing the impact of the petitioner's work, [redacted] indicated that it "has extensive application *potential* for electricity power markets [emphasis added]." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. 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 or has the potential to be of major significance is not adequate to establish that his findings are already recognized as major contributions in the field. While [redacted] praises the petitioner, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

[redacted] stated:

[The petitioner] proposed a revolutionary algorithm for penalizing outlying generators while at the same time respecting steady-state transmission topologies. He also made an unprecedented development in pattern recognition tools to

automate the design of wide-area, response-based stability controls in large-scale simulation of power system models. He invented the automated decision tree ISGA algorithm to facilitate the progress of adaptive controls for power system dynamic stability, which is clearly superior to any other algorithms using loss of synchronism for early termination of unstable events. With little loss (0.36% error) of accuracy, [the petitioner's] research made pragmatic contributions to the field of time-domain simulations by computing approximately twice as fast compared to conventional techniques.

Similarly, [redacted] discusses the petitioner's "proposed" work but fails to establish that it has been of major significance in the field. While [redacted] letter demonstrates the petitioner's original findings, he failed to establish the impact or influence of the petitioner's work, so as to establish that it has been of major significance in the field. For example, [redacted] failed to indicate the effect in the field of "computing approximately twice as fast compared to conventional techniques."

[redacted] stated:

[The petitioner] has established a new and accurate contingency ranking and screening model, called [redacted]. This particular model is not only able to strongly penalize generators from diverging from synchronization frequency of 60 Hz, but also accounts for steady-state transfer levels. Using this model one is able to judge the severity of transient events (Such as the Northeast Blackout of 2003, which affected an estimated 40 million people in eight U.S. states, and was the most widespread electrical blackout in history at the time) during simulation, and measure the relative severity of stable and unstable transient events in contingency ranking and screening, as well as for combining one-shot controls to stabilize transient events.

Again, while [redacted] discussed the petitioner's work that indicated its originality, [redacted] failed to establish that the petitioner's work has been of major significance in the field. According to [redacted], the petitioner's [redacted] "is able to judge the severity of transient events." However, [redacted] failed to demonstrate that the [redacted] has been widely utilized, or even at all, in the field, so as to establish that it has been of major significance in the field.

[redacted] stated:

[The petitioner] also created a novel econometric formulation that has proven to be very successful for the prediction of various time horizons of electricity market prices. He further theorized a new time series algorithm for formulating a correlation of electricity price forecasts with the demand forecasts of electricity loads. [The petitioner] also proposed an input selection concept and developed the corresponding algorithms to automatically prioritize explanatory variables that interpret electricity price forecasts. Ultimately, [the petitioner] was able to

establish a new systematic theory for electricity price forecasting. Similarly, via blueprinting forecasting technique categories by classifying the literature based on the technical perspective, concept, time, horizon, input-output characteristics, and level of accuracy, [the petitioner] has made a decisive breakthrough in the advancement of electricity price forecasting. Such improvements will undoubtedly bring electricity price forecasting to new levels of accuracy and practical usefulness, much like what has happened with electricity load forecasting. [The petitioner] is the first researcher to propose a fundamental taxonomy to support the validation, comparison, and enhancement of a specific or combined method of price forecasting in competitive electricity markets.

Once more, [redacted] described the petitioner's original findings but failed to indicate the impact or influence of the petitioner's work, so as to establish that it has been of major significance in the field. Instead, [redacted] speculates on the future implications of his work. For example, [redacted] stated that "[s]uch improvement *will* undoubtedly bring electricity price forecasting to new levels of accuracy and practical usefulness [emphasis added]." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. [redacted] failed to demonstrate the current impact of the petitioner's work in order to reflect that it has been of major significance in the field.

[redacted] stated:

Because of [the petitioner's] esteemed accomplishments in research, we invited him to join our project ["Price Forecasting with Market Power Analysis in Market Monitoring] in June of 2003. . . . [The petitioner] combined fuzzy inference system and least squares estimation, discovering for the first time the coexistence of accuracy and transparency for electricity price forecasting. This particular development marks a significant contribution to power system economics. His approach clearly shows that that electricity price forecasts can also be utilized to accurately predict market power indices. For example, CESI Transmission & Distribution Networks in Italy have since implemented his approach as an intelligent system for price forecasting accuracy assessments.

* * *

Once again, for the very first time, [the petitioner] found that the forecasting of transmission congestion is substantially dependent on day-ahead shadow prices. This discovery represents a considerable advancement for our project. It is an indication for performing day-ahead shadow price forecasting, as well as providing interpretable signals for different congestive conditions.

Yet again, [REDACTED] described the original findings and work of the petitioner; however, [REDACTED] failed to establish that the original contributions of the petitioner have been of major significance in the field and not limited to [REDACTED]'s project. Although [REDACTED] provided one example of the implementation of the petitioner's approach by [REDACTED] we note that according to [REDACTED] letter, [REDACTED] is contributing to the research. Nonetheless, we are not persuaded that the application by a single entity demonstrates the significance of the petitioner's work in the field as a whole.

[REDACTED] stated:

[The petitioner] presented a critical classification and comparison of state-of-the-art price forecasting techniques based on their research categories, input-output selections, accuracy and performance. As market price is the most volatile element in the electricity markets and price forecasts plays a vital role in all market participant bidding activities, [the petitioner's] unprecedented work allows for general categorization and detailed evaluation of emerging price forecasting techniques proposed by researchers of electricity markets in the world. Therefore, [the petitioner] made a major contribution to the development of electricity price forecasting techniques on a global scope.

* * *

[The petitioner's] groundbreaking study is the first fuzzy-rule based technique on electricity price forecasting, and has several important implications: in addition to offering valuable insights to our understanding of how electricity price is factorized into significantly correlated explanatory variables in a non-linear transparent visualization, it also provided rich interpretable price signals to aiding decision-making of market participants' bidding. He established the fundamentals of this method and demonstrated its applicability as a promising expert system technique for the advancement of price forecasting in electricity market bidding strategies. [The petitioner's] significant work also leads to promising research directions from mixed techniques of intelligent systems and times series to feature selection of variable correlations.

Once more, while [REDACTED] described the petitioner's original contributions, he failed to establish that the petitioner's work has been of major significance in the field and made only general statements regarding the influence or impact of the petitioner's work, such as that the petitioner's work "allows for general categorization and detailed evaluation of emerging price forecasting techniques proposed by researchers of electricity markets in the world." [REDACTED] failed to provide one example where the petitioner's work has been implemented and the result of the implementation in order to demonstrate that it has been of major significance.

[REDACTED] stated:

As an industrial researcher who relies on the evolutionary designs to improve power system performance, I can certainly attest the great impact [the petitioner's] novel design will have on the research of power system analysis when its full potential is realized. . . . My above statement is solely based on his published work.

made only broad assessments of the petitioner's work and indicated that it "will" have a great impact "when its full *potential is realized* [emphasis added]." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Clearly, failed to establish that the petitioner's work has been "realized" so as to establish that it has been of major significance in the field. It is unclear from letter whether he offered his opinion based on a review of the petitioner's published works for this petition or whether he was previously aware of the petitioner's work in the field.

stated:

[The petitioner] has been instrumental in the research progress towards the understanding of electricity power markets. I have no doubt that [the petitioner's] research has made significant influence in this field and will have profound impact on our research efforts improving the performance of electricity price forecasting.

My above statement is solely based on his published papers. The papers he has published show research results that are markedly great significance and quality as a researcher with extraordinary ability.

etter is equally unclear as to whether his opinion is based upon his knowledge of the petitioner's work prior to the filing of the petition or whether it is based only upon his review of the petitioner's published material. Regardless, indicated that the petitioner's work "*will* have profound impact on our research efforts [emphasis added]." Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

stated:

I know [the petitioner's] contribution to the development of electricity price forecasting through his proceedings paper, "State-of-the-Art of Electricity Price Forecasting" [redacted] in 2005. Though this work, [the petitioner] first presented to the literature an excellent treatment of the existing price forecasting models in the form of a survey. This significant work is critical to further research on electricity markets. [The petitioner's] contributions in this survey paper lie in the novel illustration that he used in classifying and comparing the literature based on research category, time horizon, accuracy, and performance. These results have provided valuable insights into the electricity price forecasting mechanism and helped explain various properties of electricity prices, which make [the petitioner's] work an important tool in electricity market research. Moreover, [the petitioner's] study is fundamental to research directions of price forecasting, which has become an increasingly important activity for both electricity producers and large consumers in restructured markets. [The petitioner's] research has significant impact on the formulations of accurate forecasting models, which are very challenging tasks given variations in the large number of factors that affect the electricity prices. In addition, [the petitioner] has made significant contributions to our understanding because he was able to draw several insightful conclusions about properties and attributes of electricity price forecasting. These results not only extended our understanding of electricity price forecasting, but also found important applications in relevant research.

[redacted] failed to specifically indicate how the petitioner's original work has been of major significance to the field. Instead, [redacted] made general statements, such as "[t]hese results not only extended our understanding of electricity price forecasting, but also found important applications in relevant research." [redacted] failed to identify what understanding was extended and what important applications were found.

While the recommendation letters generally describe the petitioner's work as "novel" "groundbreaking," and "revolutionary," 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.

In addition, given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's work, while original, is still ongoing and that

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

the findings he has made are not currently being implemented in his field. Again, while we acknowledge the originality of the petitioner's findings, the letters do not indicate that his work is being currently applied so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while we do not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the letters praise the petitioner's research and work as both novel and of great potential interest, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

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 his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

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

In the director's decision, although he found that the petitioner published articles in scientific 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 he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

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

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 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, has made presentations at conferences, has peer-reviewed articles, and has had his work cited by others in the field. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary

standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

While we determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner’s judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. The petitioner established eligibility based on his review of three manuscripts – [REDACTED] (October 2007), [REDACTED] to Predict Day-Ahead Electricity Prices” (June 2008), and [REDACTED] (January 2008).” We note that the petitioner submitted numerous emails requesting the petitioner to review additional manuscripts. However, the petitioner failed to submit any documentary evidence establishing that he actually reviewed these other manuscripts. Moreover, the petitioner submitted emails from him to the requester claiming that the review was completed and attached. However, the petitioner failed to submit primary evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(2) demonstrating that he performed the reviews. Furthermore, in response to the director’s request for additional evidence, the petitioner submitted screenshots from <http://mc.manuscriptcentral.com/etep> reflecting that the petitioner reviewed some manuscripts after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Finally, the petitioner submitted a letter, dated September 1, 2009, from [REDACTED] *Electrical Power*, who stated that the petitioner “has done an outstanding job reviewing 11 initial manuscripts and five revised ones.” However, [REDACTED] failed to indicate when the reviews were performed so as to establish eligibility at the time of filing. Further, the petitioner submitted a letter from [REDACTED] who confirmed that the petitioner acted as a reviewer “on a number of research papers.” [REDACTED] failed to indicate how many and when the petitioner reviewed the research papers.

We cannot conclude that the petitioner’s minimal participation as a reviewer demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). We note that peer review is a routine element of the process by which articles are selected for publication in scientific or scholarly journals or for presentation at scientific conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers and scientists 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 his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference, we cannot conclude that the petitioner is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

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

1. [REDACTED] - [REDACTED] *Letters* and [REDACTED]
2. [REDACTED]
3. [REDACTED] Reviewer for 35 publications;
4. [REDACTED]

5.

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 plain language of 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 ten scholarly articles. Again, however, when compared to the authorship of those in his field, the record reflects:

1. [REDACTED] authored 96 papers and 19 book chapters;
2. [REDACTED] - Authored 43 articles, 12 book chapters, and 23 conference papers;
3. [REDACTED] - Authored 102 articles;
4. [REDACTED] authored 33 articles;
5. [REDACTED] Authored 11 books; and
6. [REDACTED] Authored 42 papers.

Although the petitioner met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the minimal publication of such articles demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to researchers, we will evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that his work has been independently cited 40 times. While these citations demonstrate some interest in his published work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

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

1. ██████████ - 56 presentations;
2. ██████████ - 40 presentations;
3. ██████████ - 61 presentations; and
4. ██████████ - 48 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 beneficiary'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). The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated his "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.