

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B2

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER Date:

JAN 24 2011

IN RE:

Petitioner:  
Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[Redacted]

**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 July 9, 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 the one time achievement (a major, internationally recognized award) and at least three of the regulatory criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

**I. The Petitioner’s Field of Expertise**

At the time of the original filing of the petition, in Part 5 of Form I-140, Immigrant Petition for Alien Worker, the petitioner indicated that his occupation was “Director security and protective services.” In Part 6, the petitioner indicated that his job title of the proposed employment was “Director Protective and Security Services / Specialist in Couter [sic] terrorism and securit [sic].” On appeal, counsel states:

The petitioner is . . . presently [redacted] (a [redacted] and strategic planning position and not a constable out on streets). He has served as Police officer for last 23 years and risen from [redacted] (One step above the constable, the lowest rank in police hierarchy in Pakistan) to the [redacted] (Two steps below the highest rank of [redacted])

\* \* \*

[The petitioner] intended to perform and contribute as [redacted] services where by he intended to contribute to the law enforcement and

efforts of US intelligence and law enforcement community in combating violent and terrorism related crimes in USA and overseas.

\* \* \*

The law enforcement personnel and members of Intelligence community who risk their lives to apprehend or track the perpetrators of 9/11 and their operatives in War on terror. Are these men and women not comparable to people of Extra ordinary ability in other fields. There are situations in public service when the people respond beyond the call of duty and that is where they are recognized by their superiors and public at large.

We note that counsel failed to relate the petitioner's claimed field of endeavor in security, protective services, or policing to any of the fields enumerated in section 203(b)(1)(A)(i) of the Act. We must presume that the phrase "in the sciences, arts, education, business, or athletics" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). The "exceptional ability" classification, now under section 203(b)(2) of the Act, existed prior to the enactment of the Act. When the Act was amended in 1990, there existed case law interpreting "arts" as including "athletics." The extraordinary ability classification, however, was an entirely new classification. Thus, Congress chose the fields for this new classification very specifically, expressly adding "athletics" to section 203(b)(1)(A) of the Act, whereas it did not do so under section 203(b)(2) of the Act where it was already presumed to fall within the "arts." "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987). Thus, Congress was capable of expanding the fields previously recognized and chose not to expand the list of fields other than by adding athletics. If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics." As Congress *did* use that phrase, it can be presumed that there may be aliens of extraordinary ability, who enjoy sustained national or international acclaim, that are nevertheless ineligible for classification under section 203(b)(1)(A) *solely* because their occupation does not fall within the sciences, arts, education, business, or athletics. To hold otherwise would render the clear and plain language of the statute meaningless and undermine Congressional intent.

In this case, the petitioner must establish that his claimed expertise of security, protective services, or policing falls within at least one of the fields - sciences, arts, education, business, or athletics. However, a review of the record of proceeding fails to reflect that the petitioner's documentary evidence demonstrates that his claimed expertise relates to any of the fields enumerated in section 203(b)(1)(A) of the Act. Where the language of the statute is clear on its face, there is no need to inquire into congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984); *Shaar v. INS*, 141 F. 3d 953, 956 (9<sup>th</sup> Cir. 1998); *Matter of Lemhammad*, 20 I&N Dec. 316 (BIA 1991). Congress' language

limiting the fields for extraordinary ability to the sciences, arts, education, business, and athletics is clear.

As the petitioner has not established that his documentary evidence falls within the sciences, arts, education, business, or athletics, any further discussion of the evidence under the regulatory criteria is moot. Nevertheless, for purposes of thoroughness, we will address the evidence as it relates to the regulation at 8 C.F.R. § 204.5(h).

Moreover, we note here that counsel claimed on appeal:

The service should have approved the Petition as [the petitioner] was volunteering his services to US Law enforcement and Intelligence community when the US administration has clearly and unequivocally stated that success of US war on terror depends on success of US efforts to track and hunt down Militants in Pakistan. [The petitioner] knows that language, culture and policing in the Pakistan and US would benefit by recruiting such person. When we have created immigrant Visa for Afghan and Iraqi translators to boost and help track and arrest militant out to harm us, then rejecting some one who has active experience and track record of working against the militant, is incomprehensible.

As the petitioner filed an employment-based immigrant petition pursuant to section 203(b)(1)(A) of the Act as an alien of extraordinary ability, the petitioner must establish that he has sustained national or international acclaim through evidence of a one-time achievement or meets at least three of the ten regulatory categories of evidence pursuant to the regulation at 8 C.F.R. §§ 204.5(h)(3)(i) through (x). As such, the mere fact that the petitioner has volunteered his services to the United States law enforcement and intelligence community is insufficient to demonstrate eligibility for an extraordinary ability immigrant visa classification. If it was the intention of Congress to create a separate immigrant visa category specifically for law enforcement and counter-terrorism intelligence or allowing such individuals to qualify for an extraordinary ability immigrant visa classification, it would have done so. As the Act does not permit an individual who has simply volunteered his services to law enforcement or counter-terrorism intelligence to automatically become eligible for an immigrant visa classification, we are not persuaded by the arguments of counsel.

## II. Law

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> 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.<sup>1</sup> 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.

---

<sup>1</sup> 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).

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

### III. Advisory Opinions

On appeal, counsel refers to advisory opinions for “evaluation of the [petitioner’s] qualification[s], experience and claim as to an alien of Extraordinary Ability.” Specifically, counsel submitted advisory opinions from [REDACTED]

[REDACTED] A review of the advisory opinions reflects that they were asked by counsel to review selected documentary evidence and provide their professional opinions. It does not appear that these individuals were aware of the petitioner prior to being contacted by counsel. Their determination that the petitioner is an alien of extraordinary ability is not based on their prior knowledge of the petitioner or his work but merely on the evaluation of the documents given to them by counsel.

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 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2 (BIA 2008). 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.

### IV. Analysis

#### A. One-Time Achievement

Although the petitioner claimed eligibility for a one-time achievement at the time of the original filing of the petition, the director failed to address the petitioner’s claim in his decision. On appeal, we will review the petitioner’s documentary evidence to determine if it is sufficient to meet the one-time achievement requirement. *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 petitioner claims eligibility for the one-time achievement based on the following submitted documentation:

1. A Certification for [REDACTED] [REDACTED] October 30, 1998;
2. A Certification for the [REDACTED] on February 1, 2000; and
3. A Certification for [REDACTED] [REDACTED] March 23, 2006.

We note regarding items 1 and 2 that the certifications state:

The UNMIBH Medal consists of a medallion and a ribbon. The United Nations medallion is in bronze, bears the emblem of the United Nations and the letters "UN" on the front and the inscription "IN THE SERVICE OF PEACE" on the reverse. The ribbon is composed of five equal sized coloured bands as follows: a white band (representing PEACE) in the centre bordered by two blue bands (the UN Colour); The left side band is in light green (representing the Bosnia-Herzegovina's forest at Spring) while the right side band is in red (representing the sunrise over the Bosnia-Herzegovina's mountains), together symbolizing the hope of future PEACE for the Nation.

Regarding item 3 the certification states:

The UNMIK medal consists of a medallion and a ribbon. The United Nations medallion is in bronze, bears the emblem of the United Nations and the letters "UN" on the front and the inscription "IN THE SERVICE OF PEACE" on the reverse. The ribbon has two outer bands in light blue symbolizing the presence of the United Nations. The inner band in dark blue symbolizes the International Security presence and the co-operation and support received from it. Two bands in white symbolize the overall objective to promote peace for all the people in Kosovo.

On appeal, counsel also refers to the petitioner's three employment performance ratings regarding UNMIBH and UNMIK in which the petitioner received an above average rating from November 14, 1997 to September 1, 1998, an outstanding rating from October 29, 1999 to April 17, 2001, and an outstanding rating from April 17, 2001 to July 31, 2001.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19,

1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize.

While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this case, the documentary evidence submitted by the petitioner fails to reflect that the United Nations' certificates reflect major, internationally recognized awards. Instead, as indicated above, the certificates reflect recognition of the petitioner's services in Bosnia-Herzegovina and Kosovo. We are not persuaded by certificates that merely recognize or acknowledge the petitioner's services are tantamount to major, internationally recognized awards. The petitioner did not receive a major, internationally recognized award from the United Nations; rather the petitioner received certificates acknowledging his services in Bosnia-Herzegovina and Kosovo. Similarly, we are not persuaded that routine job performance ratings, regardless of the ratings, equate to major, internationally recognized awards.

On appeal, counsel also argues that the petitioner is eligible for the one-time achievement requirement based on the petitioner's receipt of the *President Police Medal* and the *President* [redacted]. Specifically, counsel argues:

The [redacted] are highest national awards conferred by Government of Pakistan on police officers of Pakistan. All police officers in service of Pakistan are eligible to compete who are nominated by respective provincial / State Governments after detailed scrutiny and the candidates are drawn from all over Pakistan. The awards are conferred based on detailed criteria which includes Extraordinary and outstanding performance, outstanding gallantry and sacrifice in performance of duties.

The awards are distinguished as *Nationally recognized* [emphasis added] . . . .

A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence reflecting that he received the [redacted] Medal. Regarding the [redacted], the petitioner received the medal on August 14, 2004, based on his actions regarding a bomb blast on January 15, 2004, outside of the Pakistan Bible Society Office opposite of the Hotel Avari Towers in the area of the Frere Police Station Clifton Town in Karachi, Pakistan. Regarding the President Police Medal, the petitioner received the medal on August 14, 1993, based on his actions regarding an apprehension of three individuals

on August 10, 1992. In addition, the petitioner submitted sufficient documentary evidence establishing that the medals are nationally recognized in Pakistan.

However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires that “[s]uch evidence shall include evidence of a one-time achievement (that is, a *major international recognized award*) [emphasis added].” While the petitioner established that the [REDACTED] are *nationally recognized*, the petitioner failed to establish that the medals are *major and internationally recognized*. In fact, counsel claims that the medals are internationally recognized by referring to recommendation letters that are not contained in the record of proceeding. Specifically, counsel refers to reference letters from [REDACTED]. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, the unsupported statements cited by counsel merely reflect that the petitioner met the qualifications for the medals; not that the medals are major, internationally recognized awards. For example, counsel claimed that [REDACTED] stated that the petitioner “displayed high sense of responsibility and timely initiative at the occasion.” Moreover, counsel claimed that [REDACTED] stated that the petitioner “deserves grant of gallantry award [REDACTED] in recognition of his outstanding performance and further encouragement.” Finally, counsel claimed that [REDACTED] stated that the petitioner “is very competent, intelligent and responsible officer.” The purported letter cited from [REDACTED] does not even relate to the [REDACTED] or the [REDACTED]. The alleged letters fail to reflect any evidence that the medals are *major and internationally recognized*.

Furthermore, counsel refers to a certificate of appreciation and a recommendation letters that are unrelated to the [REDACTED]. For example, a certificate of appreciation from [REDACTED] Pakistan, recognized the petitioner's heroic efforts at a massive twin-car bomb blast in front of the Pakistan American Cultural Center on May 26, 2004. Moreover, a letter of appreciation from [REDACTED] Consulate General of Japan at Karachi, recognized the petitioner's “extraordinary sense of duties and responsibilities as the police in-charge.” Neither of these documents relates to the Quaid-e-Azam Police Medal or the President Police Medal, let alone constitutes evidence that the medals are *major and internationally recognized*.

Finally, counsel refers to a reference letter from [REDACTED], who indicated that the petitioner “was injured twice in bomb blasts, in Avari Towers and PACC, while he was securing the lives of citizens.” However, the letter fails to mention the [REDACTED] as well as establishing that it is a major, internationally recognized award.

While the petitioner established that the [REDACTED] and the [REDACTED] are nationally recognized awards, the petitioner failed to demonstrate that the medals are major, internationally recognized awards. Even if we found that the certificates from the United

Nations or the police medals are major, internationally recognized awards, which we clearly do not, the certificates or medals do not fall within any of the fields enumerated in section 203(b)(1)(A)(i) of the Act, as previously discussed above. The awards will be further addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

***B. Evidentiary Criteria***

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner claimed eligibility for this criterion based on the documentary evidence discussed above under the one-time achievement:

1. [REDACTED] on October 30, 1998;
2. [REDACTED] on February 1, 2000;
3. [REDACTED] on March 23, 2006;
4. [REDACTED] on August 14, 2004; and
5. [REDACTED] on August 14, 1993.

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)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Regarding items 1 – 3, for the reasons already discussed above, the documentary evidence submitted by the petitioner fails to reflect that the United Nations' certificates reflect nationally or internationally recognized awards for excellence. Instead, the certificates reflect recognition of the petitioner's services in Bosnia-Herzegovina and Kosovo. We are not persuaded that certificates which merely recognize or acknowledge the petitioner's services are tantamount to nationally or internationally recognized awards for excellence.

Regarding items 4 and 5, we are persuaded that the medals are lesser nationally recognized awards for excellence. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i)

---

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

requires that the nationally recognized awards for excellence be “in the field of endeavor.” As the petitioner’s field of security, protective services, or policing fails to fall within at least one of the fields of the sciences, arts, education, business, or athletics pursuant to section 203(b)(1)(A)(i) of the Act, the petitioner’s medals, as well as the certifications from the United Nations, fail to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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

*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.*

In the director’s decision, he found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on the following memberships:

1. National Association of Police Organizations (NAPO);
2. International Police Association (IPA);
3. Strathmore’s Who’s Who (SWW); and
4. United Nations International Police Task Force (UNIPTF).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

Regarding item 1, the petitioner submitted a letter from [REDACTED], indicating that the petitioner is a member of NAPO. In addition, the petitioner submitted background information from NAPO, screenshots from [www.napo.org](http://www.napo.org), and NAPO Bylaws. According to the bylaws:

Section 1. Any *bona fide* law enforcement organization may apply for membership in NAPO. For the purpose of this section, “*bona fide* law enforcement organization” is deemed to mean any association or organization active in the promotion of the interest and welfare of sworn law enforcement officers, both active and retired.

\* \* \*

Section 3. Individual Associate Member. Any individual who supports the purposes and objectives of this organization as reflected in the Preamble may apply for individual associate membership.

The petitioner failed to establish that membership with NAPO requires “outstanding achievements of [its] members, as judged by recognized national or international experts.” We are not persuaded, as indicated in the bylaws that “[a]ny *bona fide* law enforcement organization” and “[a]ny individual who supports the purposes and objectives,” can apply for membership with NAPO reflects outstanding achievements. Regardless, the petitioner failed to establish that membership is judged by recognized national or international experts.

Regarding item 2, the petitioner submitted a copy of a membership card reflecting that he is a member of IPA. In addition, the petitioner submitted screenshots from [www.ipa-iac.org](http://www.ipa-iac.org). A review of the screenshots reflects the history and background information of IPA, including the benefits of membership. However, the documentary evidence submitted by the petitioner fails to reflect the membership requirements of IPA, so as to establish that membership requires outstanding achievements of its members, as judged by recognized national or international experts. Merely submitting documentary evidence reflecting the petitioner’s membership with a particular association or providing background information about an association without evidence reflecting that the petitioner’s membership with an association requires outstanding achievements of its members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation. It is the petitioner’s burden to establish every element of this regulatory criterion.

Regarding item 3, the petitioner submitted a letter from [REDACTED] who indicated that the petitioner is a member of SWW. In addition, the petitioner submitted two screenshots from [www.strathmore-ltd.com](http://www.strathmore-ltd.com). The first screenshot merely indicated that SSW is “[h]istorically a leading biographical publication listing thousands of successful individuals in the fields of Medicine, Business, Education, the Arts & Sciences, Research, Healthcare, Law, Engineering, and Government.” The second screenshot lists twelve individuals in the “Hall of Fame.” The screenshots fail to reflect that membership requirements of SWW, so as to establish that outstanding achievements are required for membership, as judged by recognized national or international experts. Again, simply submitting evidence of the petitioner’s membership with an association is insufficient without documentary evidence reflecting that membership requires outstanding achievements of its members, as judged by recognized national or international experts.

Regarding item 4, while the petitioner submitted documentary evidence regarding his involvement with the UNIPTK in Bosnia-Herzegovina and Kosovo, the petitioner failed to submit any documentary evidence reflecting the requirements to be a part of the UNIPTK. The petitioner failed to establish that his participation with the UNIPTK requires outstanding achievements of its members, as judged by recognized national or international experts.

Even if the petitioner had established that his membership with NAPO, IPA, SWW, or UNIPTF required outstanding achievements of its members as judged by national or international experts, which he did not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the membership in associations be “in the field for which classification is sought.” As the petitioner’s field of expertise fails to fall within one of the fields enumerated in section 203(b)(1)(A)(i) of the Act, he failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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

*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. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on three articles:

1. [REDACTED] unidentified date, unidentified author, in *Voice of Police*;
2. [REDACTED] and Honor of Public,” unidentified date, unidentified author, in [REDACTED] and
3. [REDACTED] February 2005, by [REDACTED], in *Jaraim International*.

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.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some

newspapers, such as the New York Times, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.” We note here that the translations accompanying items 1 and 2 failed to include the date and author of the material. Although counsel claimed on appeal that item 1 was authored by [REDACTED] in October 2007, and item 2 was authored by [REDACTED] in August 2007, counsel failed to submit certified translations supporting his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As the petitioner failed to include the date and author of the material for items 1 and 2, he failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Nonetheless, regarding item 1, a review of the article reflects that it is published material about the petitioner relating to his work. The petitioner submitted a letter from [REDACTED] who stated that [REDACTED] in Pakistan.” However, [REDACTED] also stated:

The magazine has monthly publication of 10,000 copies and has wide readership and circulations.

\* \* \*

The Voice of Police is major in terms of its circulation and audience. The magazine *will be probably* amongst 100 important magazines in Pakistan where about 500 magazines are published each month and day [emphasis added].

In addition, the petitioner submitted a letter from [REDACTED] who stated:

The magazine has monthly publication of ten thousand copies and has wide readership and circulations.

\* \* \*

---

<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

The Voice of [P]olice is major in terms of its circulation and audience. The magazine *will be amongst* 100 important magazines in Pakistan where about 500 magazines are published each month.

Although [REDACTED] claimed that *Voice of Police* is major media, we are not persuaded that a monthly publication of 10,000, which is published in Karachi, Pakistan, is reflective of major media. We note that [REDACTED] failed to offer any numbers of other circulations as a comparison so as to establish that *Voice of Police* is major media. Furthermore, [REDACTED] claim that *Voice of Police* will be probably amongst 100 important magazines in Pakistan” and [REDACTED] claim that *Voice of Police* “will be amongst 100 important magazines in Pakistan” is in terms of future probability and speculate on the importance of the magazine 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. 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 [REDACTED] claimed that *Voice of Police* is major media, the statements in their letters fail to support their claims.

Regarding item 2 and 3, a review of the articles fails to reflect published material about the petitioner relating to his work. Instead, the articles are interviews conducted with the petitioner. In fact, regarding item 2, the translation states that “[the petitioner] spoke to Monthly SADA E WATAN and expressed his c [sic] views which are being summarized for the readers as below.” Moreover, regarding item 3, the article reflects an interview conducted with the petitioner where the questions and answers are printed in verbatim. The articles do not discuss the petitioner and the petitioner’s work; rather the articles summarize and repeat the responses by the petitioner to the interviewer’s questions. Furthermore, regarding item 2, the petitioner refers to the letter from [REDACTED] who stated:

The magazine has monthly publication of 40,000 copies and has wide readership and circulations.

\* \* \*

The media is major in terms of its circulation and audience. The magazine is probably amongst 50 important magazines in Pakistan where about 500 magazines are published each month and day.

Again, while [REDACTED] claimed that *Sada-e-Watan* is major media, we are not persuaded that a magazine of 40,000 publications monthly is demonstrative of major media. Clearly, [REDACTED] has higher circulation statistics than *Voice of Police* but, as stated above, [REDACTED] failed to submit any numbers for any other circulations as a comparison so as to establish that [REDACTED] is

major media. In addition, [REDACTED] generally claims that *Sada-e-Watan* "is probably amongst 50 important magazines in Pakistan" without offering any specific details to support his claims.

Regarding item 3, the petitioner also refers to the letter from [REDACTED]. However, in discussing the significance of *Jaraim International*, Mr. Shah refers to *Voice of Police*. Specifically, [REDACTED] stated:

The magazine has monthly publication of ten thousand copies and has wide readership and circulation.

\* \* \*

It is difficult to estimate as to exact number of readers of *Voices of Police* as the Magazine is at times read by multiple readers and shared by families and community.

\* \* \*

Based on authentic information and analysis, I will say that the *Jaraim International* is Major Media especially the one, which focuses on Crime and security and with extensive readership and continuous publication.

The appearance of article in the monthly issue of *Voice of [P]olice* is evidence of recognition about contribution of [the petitioner] in the security, crimes prevention and other related issues.

The authorship of articles and recognition in *Voice of [P]olice* is evidence of National Acclaim of [the petitioner], as an Extraordinary Police officer of Pakistan, based on his services and contribution in the field of counter terrorism conflict Management and security related issues.

As evidence above, we are unable to discern if [REDACTED] is referring to *Jaraim International* or *Voice of Police*. Regardless, we are not persuaded that a monthly circulation of 10,000 or 40,000 is reflective of major media.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "in the field for which classification is sought." While the articles are in the petitioner's field of policing, the petitioner's field is not within the fields of the sciences, arts, education, business, or athletics enumerated in section 203(b)(1)(A)(i) of the Act.

Accordingly, the petitioner failed to establish that he meets 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. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on:

1. Authorship of a document entitled, [REDACTED];
2. Authorship of a booklet entitled, [REDACTED]
3. Authorship of an article entitled, [REDACTED] and [REDACTED] and [REDACTED]
4. Authorship of a document entitled, [REDACTED]
5. Authorship of a document entitled, [REDACTED]
6. Authorship of a document entitled, [REDACTED]
7. Authorship of a document entitled, [REDACTED]
8. Service with UNMIBH; and
9. Service with UNMIK.

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

Regarding items 1 – 7, we note that the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the publication of scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Therefore, the mere publication of his articles is not sufficient to meet this criterion. Rather, he must establish that these articles have impacted his field. While the petitioner’s authorship of material reflects evidence of the petitioner’s original work, the petitioner failed to establish that the material has impacted or field as whole and not limited to Karachi, Pakistan. For example, the petitioner failed to submit any documentary evidence reflecting

that the [REDACTED]

[REDACTED] have been used outside of the Clifton Sub Division, Manghopir Police Station, or other law enforcement departments in Karachi, Pakistan, so as to demonstrate that they are of major significance in the field.

Regarding items 8 and 9, a review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he served in Bosnia-Herzegovina and Kosovo as part of a mission of the United Nations. While the petitioner's performance ratings reflect that the petitioner received two outstanding ratings and one above average rating, they fail to reflect how the petitioner's service has impacted his field so to be considered contributions of major significance. 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. *See Matter of New York State Dep't. of Transp.*, 22 I & N Dec. 215, 221 (Commr. 1998). We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner's work has been original, unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires the petitioner's original contributions to be "scientific, scholarly, artistic, athletic, or business-related" and "in the field." As the petitioner's field is not scientific, scholarly, artistic, athletic, or business-related, the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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.*

The director found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A document entitled, [REDACTED]
2. A document entitled, [REDACTED]
3. A document entitled, [REDACTED]
4. A document entitled, [REDACTED]

5. A document entitled, [REDACTED]

6. A booklet entitled, [REDACTED]

7. An article entitled, [REDACTED]

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.” Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the petitioner’s documents, booklet, and article do not contain the characteristics of scholarly articles and appear to be more for informational purposes than scholarly purposes. As there is no evidence demonstrating that the petitioner’s documents, booklet, or article were peer-reviewed, contain any references to sources, or were otherwise considered “scholarly,” the petitioner’s documentary evidence is insufficient to meet this criterion.

Furthermore, regarding items 1 – 5, the petitioner failed to submit any evidence establishing that the documents were published, let alone published in professional or major trade publications or other major media. Regarding item 6, the booklet reflects that it was printed by [REDACTED]. However, the petitioner failed to submit any documentary evidence establishing that Sindhica Academy is a professional or major trade publication or other major media. Regarding item 7, the petitioner failed to submit any documentary evidence demonstrating that *Suragh Rasan News* is a professional or major trade publication or other major media.

Merely submitting documentary evidence reflecting the authorship of material is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) without evidence reflecting that the material is scholarly and published in professional or major trade publications or other major media. Furthermore, the plain language of the regulation requires the scholarly articles to be “in the field.” As the petitioner’s documents do not fall within any of the fields enumerated in section 203(b)(1)(A)(i) of the Act, the petitioner failed to establish eligibility for the plain language of this regulatory criterion.

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

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

The director found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on his roles with the UNMIBH and UNMIK and referred to the following submitted documentation:

A letter of commendation from [REDACTED] Office for UNMIK, who stated:

[The petitioner] was appointed as [REDACTED] on the 03th of June 2005.

\* \* \*

I can here underline important tasks his Platoon has carried out: Special arrests of high risk classified criminals, security for the visit of Russian-Serb Delegation, protection of an important witness, security for post war criminal trials involving former high ranking UCK members, for the most important tasks.

Under his command, the Pakistan Alpha Platoon has also performed many duties for the United Nations Mission in KOSOVO like public order for gatherings or demonstrations, prisoners and VIPs escorts, support to the United Nations Civilian Police performances and many other tasks.

He was in charge to train the UNMIK Prisoner Escort Unit for high risks escorts and carried out his task with a high level of professionalism.

The petitioner's performance rating by [REDACTED] stated:

[The petitioner] has worked in Bihac region since his deployment to the mission. Initially he worked in Kupres in Canton 10, arguably the most volatile area in Bosnia and Herzegovina. It was during his time there that he demonstrated his abilities as both an organizer and investigator, being responsible for the administration and logistics and later, for the investigation of Human Rights cases.

His abilities were noted at regional headquarters and he was soon appointed as an Operations Officer at Bihac RHQ where he rapidly rose to the position of Deputy Chief of Operations for the entire region. This is one of the most responsible positions available to an IPTF monitor and requires endorsement from the IPTF Commissioner. In accepting this position, [the petitioner] has taken responsibility that requires true leadership and personal dynamics. In this he has excelled.

In a letter of appreciation from [REDACTED] stated:

Since his arrival at IPTF KUPRES, on November 11<sup>th</sup> 1999, [REDACTED] always been a very professional and competent Police Officer, aware of the S.O.P. and the purpose of the U.N. Mission in Bosnia & Herzegovina.

He has always volunteered to perform extra-duty, he is friendly and well liked both by other [REDACTED]

Due to these reasons, I appointed him as Administration Officer for IPTF KUPRES at the beginning of January, 2000.

He performs this duty, in a very professional manner. He is a great asset to the BIHAC' Region and the 'U.N.M.I.B.H.' both of which will suffer from his departure.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. Based on the submitted documentary evidence listed above, we are not persuaded that the petitioner has performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

While a review of the record of proceeding reflects that the petitioner served with the UNMIBH and UNMIK, the record falls far short in establishing that his positions also demonstrate that he performed in a leading or critical role. The petitioner failed to submit sufficient documentary evidence distinguishing him from the other service members in similarly appointed positions with the United Nations' missions. Although the commendation letter from [REDACTED] referred to the petitioner's position as [REDACTED] of the SPU Pakistan [REDACTED] referred to the petitioner's position as the Deputy Chief of Operations, and [REDACTED] referred to the petitioner's position as Administrative Officer, the petitioner failed to submit an organizational chart or other similar evidence to differentiate the petitioner from other service members to demonstrate his position in relation to that of the other service members in similar positions at any of these missions. The petitioner failed to establish that his positions were leading or critical for the United Nations as a whole and not limited to specific assignments within missions in Bosnia-Herzegovina and Kosova. For example, the record reflects that the petitioner's roles were limited to the Alpha Platoon Commander of the SPU Pakistan, Deputy Chief of Operations of the Bihac region, and Administration Officer for IPTF Kupres. For instance, based on title alone, it is clear that the petitioner was subordinate to the chief of operations. When compared to the United Nations as a whole, the petitioner failed to establish that his limited roles equate to leading or critical roles.

Notwithstanding the above, even if the petitioner established that his roles with the United Nations were leading or critical, which he did not, the petitioner failed to meet the plain language of the regulation which requires leading or critical roles in more than one organization or establishment.

In this case, the petitioner only submitted documentation as it relates to one organization. Furthermore, the petitioner's field is not within the fields of the sciences, arts, education, business, or athletics pursuant to section 203(b)(1)(A)(i) of the Act.

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A letter from [REDACTED] who stated that the petitioner earned \$12,600 for the UNMIK from October 1, 2008 to March 3, 2009;
2. A letter from [REDACTED] who stated that the petitioner earned \$54,438 for the UNMIK from June 3, 2005 to June 18, 2007;
3. A letter from [REDACTED] who stated that the petitioner earned \$48,000 from October 29, 1999 to July 21, 2001; and
4. A letter from [REDACTED] of Police, who listed 19 positions the petitioner held from January 1988 to the date of the filing of the petition, as well as the pay and package along with entitlements for vehicle, telephone, fuel, gunman, and guards.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added].” Regarding items 1 – 3, the petitioner failed to submit any documentary evidence comparing his salaries to others, so as to establish that he has commanded a high salary in relation to others.

Regarding item 4, the petitioner failed to submit primary evidence, such as earning statements or taxes, for the claimed salaries. Regardless, while [REDACTED] provided the “Salary to Others” for each position held by the petitioner, the petitioner failed to submit sufficient documentary evidence establishing that he commanded a high salary or other significantly high remuneration for services. For example, regarding the petitioner's current position [REDACTED] indicated that the petitioner earns 33,000 Pakistani rupees per month, as well as 34,200 rupees for fuel charges, 40,000 rupees for personal employees and 5,000 rupees for telephone. [REDACTED] further indicated that the “Salary to Others” is 31,000 rupees. [REDACTED] failed to indicate any entitlements for the “Salary to Others.” We are not persuaded that 2,000 rupees more a month than the “Salary to Others” is reflective of a significantly high salary

compared to others. Furthermore, as [REDACTED] failed to include the entitlements for the “Salary to Others,” the petitioner failed to establish that he has commanded significantly high remuneration for services. We note that a review of the other 18 positions resulted in the similar minimal increase of the petitioner’s salary to the “Salary to Others.”

In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that the high salary or significantly high remuneration for services be “in relation to others in the field.” The petitioner failed to submit any documentary evidence comparing his salary to others in the petitioner’s field and not limited to Karachi, Pakistan. Moreover, as the petitioner’s salary does not fall within any of the fields enumerated in section 203(b)(1)(A)(i) of the Act, the petitioner failed to establish eligibility for the plain language of this regulatory criterion.

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

### ***C. 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 failed to establish eligibility for any 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. We must emphasize that the petitioner’s claimed expertise of security, protective services, or policing fails to fall within at least one of the fields of sciences, arts, education, business, or athletics pursuant to section 203(b)(1)(A) of the Act. In this case, we acknowledge that the petitioner has admirably served the United Nations’ peacekeeping missions in Bosnia-Herzegovina and Kosovo, as well as performed his routine responsibilities as a police officer. However, the accomplishments of the petitioner fall far short of establishing that he “is one of that small percentage who have risen to the very top of the field of endeavor” and that he “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The

petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

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, while the petitioner demonstrated that his two police medals are nationally recognized awards, he failed to establish that the awards fall within at least one of the enumerated fields pursuant to section 203(b)(1)(A) of the Act. Regarding the membership criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner failed to submit sufficient documentary evidence demonstrating that the petitioner's membership with NAPO, IPA, SWW, or UNIPTF require outstanding achievements of their members, as judged by recognized national or international experts. We note that the membership card for IPA reflects that the petitioner maintained membership in 2003 and 2005. The membership letter for NAPO indicates that the petitioner's membership will expire in December 2007. The petitioner failed to submit any documentary evidence establishing that he was a member of IPA and NAP at the time of the original filing of the petition, so as to demonstrate sustained national or international acclaim. Moreover, as it relates to the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner failed to include the date of author of two of the articles and only submitted one article that was published material about the petitioner relating to his work. We are also not persuaded that the submission of three articles is consistent with sustained acclaim required for this highly restrictive classification. Regarding the original contributions of major significance criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner claimed eligibility based on his service with UNMIBH and UNMIK without offering any evidence establishing that his service is an original contribution of major significance. In addition, regarding the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the petitioner claimed eligibility based on documents that were not scholarly, provided no evidence that five of the documents were ever published, and no evidence that two of the documents were published in professional or major trade publications or other major media. Regarding the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner claimed eligibility for only one organization and failed to establish that his roles were leading or critical. Finally, as it relates to the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner failed to submit evidence

comparing his salary regarding his service with the United Nations and failed to submit evidence comparing his salary to others in the petitioner's field and not limited to Karachi, Pakistan.

We again note that while the petitioner submitted advisory opinions praising the petitioner, such opinions cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795 (Commr. 1988). 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 sustained national or international acclaim.

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.

#### **V. Intent to Continue to Work in the Area of Expertise in the United States**

While not addressed by the director in his decision, we note that the regulation at 8 C.F.R. § 204.5(h)(5) states:

Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

A review of the record of proceeding reflects that the petitioner submitted a letter stating:

I intend to contribute my expertise to United States agencies such as Federal Bureau of Investigation, Counter terrorism Task Force, Special assignment Units worldwide and State Law Enforcement Departments. I have served as Head of various security operations and this experience and extraordinary ability will help United States develop much needed governmental effort in Law Enforcement, International peace, security and counter terrorism operations and programs.

\* \* \*

I will be able to conduct surveillance, examine business records, investigate white-collar crimes, and participate in sensitive undercover assignments keeping in view my experience in International arena as well as experience in Pakistan.

I plan to establish an International Security and Protective Service organization through which I will target international crime syndicates and terrorist cells operating from South Asian and Middle Eastern locations. Due to my peculiar training and expertise and language abilities I will offer my services to the United States and other agencies combating crime and terrorism across the Globe. I will be able to recruit and provide security service and asset protection personnel for US contractors in overseas projects.

I intend to help the efforts of the United States government through the Department of State and the Department of Defense to provide Civilian Police Officers help boost the US effort to train Iraqi and Afghan Civilian Police Officers.

Notwithstanding that the petitioner's claimed area of expertise does not fall within any of the grounds enumerated in the statute, we find the petitioner's letter insufficient to establish the petitioner's intent to continue in his area of expertise. While the petitioner made general claims that he will work with the Federal Bureau of Investigation, counter terrorism task force, and state law enforcement agencies, he failed to submit any documentary evidence supporting his future employment at any of these establishments or organizations. He has offered no specific details regarding, for instance, how he would obtain employment, whether he has any contacts, or whether his experience qualifies him for any particular position. The petitioner's mere general desire to work for any of the organizations or establishments along with a description of his qualifications is insufficient to demonstrate a detailed plan of his intention to continue to work in his area of expertise.

Accordingly, the petitioner failed to establish by clear evidence that he intends to come to the United States to continue in his area of expertise pursuant to section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(h)(5).

## **VI. 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 one of the fields enumerated in section 203(b)(1)(A)(i) and (ii) of the Act. 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.