identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: JUL 11 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 Acting Director (the director), Texas Service Center, on March 24, 2011, 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 as an economics professor. 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, the petitioner states:

> I understand that the final decision was made on March 24, 2010, just two (2) weeks after the submission of evidence requested in the NOID was received on March 10, 2011, but the final decision did not mention neither analyze written material and other evidence provided. Therefore, the evidence I provided could either be ignored or misunderstood. Additionally to this reason, I would like orally to express other major concerns and information related to my case before the [AAO] while I do believe I will submit evidence and my brief in 30 days, showing that I meet at least three of ten criteria outlined in the USCIS Regulation.

It is noted that the petitioner submitted a brief within 30 days of his appeal, and it is contained in the record of proceeding. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Further, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

A review of the record of proceeding reflects that at the time of the original filing of the petition, although the petitioner filed an alien of extraordinary ability petition pursuant to section 203(b)(1)(A) of the Act, the petitioner's prior counsel submitted a cover letter and documentary evidence arguing the petitioner's eligibility as an alien who is a member of the professions

holding an advanced degree or an alien of exceptional ability pursuant to section 203(b)(2)(A) of the Act.[1] As such, the director issued a notice of intent to deny the petition pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) providing the petitioner the opportunity to establish eligibility as an alien of extraordinary ability, including evidence that the petitioner is coming to the United States to continue to work in his area of extraordinary ability pursuant to section 203(b)(1)(A)(ii) and 8 C.F.R. § 204.5(h)(5). In response, the petitioner submitted a letter detailing his plans on how he intended to continue to work in the United States, as well as documentary evidence reflecting teaching contracts and course schedules. In the director's decision, she did not address the documentary evidence or indicate if the petitioner overcame the grounds for the notice of intent to deny for this issue. Based on a review of the documentary evidence, the petitioner submitted sufficient documentation demonstrating that he intends to continue to work in his field of expertise.

It is further noted that the petitioner indicated in his appellate brief that the director erroneously mailed the decision to South Carolina instead of North Carolina. A review of the record of proceeding reflects that at the time of the filing of the petition, the petitioner indicated on Form I-140, Immigrant Petition for Alien Worker, that he resided in South Carolina. However, in response to the director's notice of intent to deny, the petitioner indicated that his state of residence was North Carolina. For the record, as indicated in the AAO's cover letter for this decision, the petitioner's state of residence is North Carolina.

Furthermore, the petitioner also indicated in his appellate brief that at the time he filed his petition, he was assigned a different alien registration number (A#) and a different receipt number for his petition than was indicated in the director's decision. A review of the record of proceeding reflects that the director's decision referenced an incorrect A# and receipt number. For the record, the A# and receipt number reflected on this decision are the petitioner's correct A# and receipt number. Beyond the appeal process itself, it is not clear what remedy the petitioner seeks. The petitioner has, in fact, supplemented the record on appeal and made further arguments regarding his eligibility. Regardless, the AAO will review the record in its entirety based on the petitioner's appellate arguments regarding his eligibility. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

I. Law

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

---

[1] The record of proceeding reflects that the petitioner's prior counsel was [redacted] In response to the director's notice of intent to deny the petition, the petitioner indicated that [redacted] was no longer his counsel and all correspondence should be forwarded to the petitioner.

> (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.[2] 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,"

[2] 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).

> 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 a Service Center decision where the two-step analysis was applied, the AAO will conduct a *de novo* review to determine if the decision complied with the analysis set forth in *Kazarian*. *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.

II. Analysis

A. Evidentiary Criteria

This petition, filed on June 22, 2010, seeks to classify the petitioner as an alien with extraordinary ability as an economics professor. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3). [3]

> *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.*

The district director found that the petitioner failed to meet the plain language of the regulation for this criterion. In the petitioner's brief, the petitioner did not contest the decision of the director or offer additional arguments. The AAO, therefore, considers this issue to be abandoned and will not further discuss this criterion on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

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.*

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

The district director found that the petitioner failed to meet this criterion. On appeal, the petitioner argues that the following documentation demonstrates his eligibility for this criterion:

1. A screenshot entitled, [redacted]' June 11, 2010, by [redacted], [redacted] and

2. An article entitled, [redacted] May 2011, by the petitioner, [redacted]

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.[4]

Regarding item 1, the screenshot is about finding jobs in the recession in the Maryland area. Although the article contains a picture of the petitioner with a caption reflecting the petitioner lecturing at [MSU], along with some of his quotations, the screenshot is not about the petitioner relating to his work. In fact, the screenshot contains quotations from other individuals as well. Moreover, the petitioner failed to submit any documentary evidence establishing that [redacted] is a professional or major trade publication or other major media. The AAO is not persuaded that articles posted on the Internet from a printed publication are automatically considered major media. In today's world, many newspapers and media outlets, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding item 2, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work in the field for which classification is sought. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. Articles authored by the petitioner are not articles about the petitioner relating to his work. Notwithstanding, the article was published in May 2011. The petitioner filed his petition

[4] 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.

on June 22, 2010. 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. Comm'r. 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 USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The AAO notes that in response to the director's notice of intent to deny, the petitioner also claimed eligibility for this criterion based on a textbook cover from [redacted] of the [redacted] who "printed [the petitioner's] full name and [his] institution on the Instructor textbook in recognition of [his] relevant lectures in classrooms." The submitted textbook cover fails to provide any evidence of published material about the petitioner relating to his work. Instead, the textbook cover merely reflects a complimentary copy of [redacted] textbook to the petitioner. Clearly, the textbook cover does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, even if the petitioner were to submit supporting documentary evidence showing that item 1 meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires material about the petitioner in more than one major publication. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[5]

For the reasons discussed above, the petitioner failed to establish that he has published material about him relating to his work in professional or major trade publications or other major media consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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

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

---

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

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

While the petitioner did not claim eligibility for this criterion at the time of the initial filing of the petition or in response to the director's notice of intent to deny the petition, the director concluded that the petitioner failed to establish eligibility for this criterion. On appeal, the petitioner argues that he is eligible for this criterion based on two PowerPoint presentations, the previously mentioned textbook cover from [redacted] and several recommendation letters.

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 business or scholarly-related contributions "of major significance in the field."

Regarding the PowerPoint presentations, on appeal the petitioner refers to the submitted presentations entitled, [redacted] at [redacted] and [redacted] at [redacted]. The record of proceeding also contains a paper entitled, [redacted] that was presented by the petitioner at the [redacted] at [redacted] in February 2009.

Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not necessarily equate to an original contribution of major significance in the field. In this instance, there is no evidence such as that the petitioner's conference or PowerPoint presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field, so as to establish that they have been of major significance in the field. Again, while the petitioner made presentations and shared his work with others, the AAO is not persuaded that simply submitting evidence of his

presentations at three venues is sufficient evidence establishing that the petitioner's work is of major significance to the field as a whole rather than limited to the three engagements in which they were presented. The petitioner failed to establish, for example, that the presentations have significantly influenced the field, so as to establish their impact or influence beyond the audience at the conferences. Merely submitting documentary evidence that the petitioner made presentations without submitting any documentary evidence demonstrating that the field has widely used the petitioner's presentations is insufficient to reflect that they have been of major significance.

The record of proceeding also reflects that the petitioner submitted a letter from [redacted] requesting that the petitioner attend a [redacted] from July 31 – August 5, 2011, and encouraged the petitioner to make a presentation and to provide a paper on a relevant aspect of the topic. 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 USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Notwithstanding that the petitioner failed to establish that he attended the symposium and presented a paper, the petitioner failed to submit any documentary evidence demonstrating that it resulted in an original contribution of major significance in the field.

Regarding the textbook cover by [redacted], as previously discussed, it simply reflects a complimentary copy of [redacted] textbook to the petitioner. On appeal, the petitioner claimed that the textbook cover reflects [redacted] "recognition of [the petitioner's] relevant lectures in classrooms witnessed by his compliments." The petitioner failed to submit any documentary evidence supporting his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless, the textbook cover fails to demonstrate any evidence of contributions made by the petitioner, let alone original contributions of major significance in the field.

Regarding the reference letters, they praise the petitioner for his work as an economics professor, but they fail to indicate that the petitioner has made original contributions 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:

[redacted] stated:

> [The petitioner's] interest in students and desire to provide quality educational experiences to them is admirable. It was a pleasure to work with him. Since leaving [redacted], he has remained active in his national research and professional activities. He has a research proposal under consideration for an upcoming International Monetary Fund conference. A recent published article of

> his discussed urban development efforts in downtown Baltimore. [The petitioner] also presented a research paper at the [redacted] annual conference and another at the [redacted] teaching conference at [redacted] He currently is [redacted] at [redacted] Baltimore, MD.

While [redacted] admires the petitioner's teaching abilities, he failed to identify any original contributions of major significance in the field. Instead, [redacted] summarized the petitioner's accomplishments and teaching experience without establishing that the petitioner's personal achievements have impacted the field in a significant manner.

[redacted] stated:

> From my conservations with [the petitioner] and reviewing his curriculum vitae, I am impressed with what he *can* bring to an academic department [emphasis added].
>
> His education is broader than what most economists earn. He complements his economics training with studies in business management and sociology. He has earned degrees abroad and taught abroad. He also has experience with business consulting and working with non-profit organizations. His diverse background makes him suitable for a liberal arts college and for participating in interdisciplinary/professional programs.

Similarly [redacted] failed to indicate any original contributions of major significance in the field made by the petitioner. Rather, [redacted] indicated that he was impressed with what the petitioner *could* bring to an academic department without identifying what the petitioner has already brought to an academic department that could be considered an original contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. [redacted] appears to speculate about how the petitioner may affect an academic department 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 USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The assertion that the petitioner may affect an unspecified academic department at some point in the future is inadequate to establish that the beneficiary has made original contributions of major significance in the field.

Moreover, while [redacted] was impressed with the petitioner's educational background and diverse skill sets, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor

certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

[redacted] stated:

> [The petitioner] has always displayed the highest degree of integrity, dependability and knowledge. He has an incredible wealth of knowledge and experience that is an invaluable asset and has and will be an immense positive impact on his students. I have gained much knowledge and sharpened my skills enormously under his tutelage. It would in my opinion be unacceptable to loose [sic] his unique presence, skills and knowledge, he is truly an asset to our academic community.

Again, [redacted] praises the petitioner's skills, knowledge, and integrity without identifying an original contributions, let alone original contributions of major significance in the field. Furthermore, [redacted] indicated the petitioner's influence on his own knowledge and skills rather than the influence of the petitioner in the field as a whole.

The petitioner also submitted a memorandum, dated April 19, 2011, from [redacted] who indicated that the petitioner is a candidate for the [redacted] In support of the award, the petitioner submitted a letter from [redacted], who stated:

> In the short time that I've had [the petitioner] as a professor, he has helped to transcend my fear and lack of knowledge of economics into a confidence and understanding of the subject that I never had before.
>
> [The petitioner's] masterful knowledge of the subject matter and keen awareness of his students various academic backgrounds are clearly evident in his pedagogy. What I appreciate most about my experiences in his class is that he takes the time to explain the concepts, and assess our level of understanding in ways that many other professors do not. He's eager for us to learn and comprehend the concepts of economics, not just memorize them for the exams. [The petitioner] has not only equipped me with a comprehensive understanding of the content, but he has also enabled me to draw parallels between the work in his class, with the work in my other courses.

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

> [The petitioner] encourages student interaction in class. He creates a classroom environment where students are free to express their thoughts and ideas in correspondence to the lectures. Being in this Macroeconomics class, I realized that my thirst for knowledge continuously increased leading to my sense of excitement when I had to go to class. Increasing a student's drive for education is

> a wonderful accomplishment that [the petitioner] has achieved. Another significantly quality he obtains is making students feel a sense of care from him. At the end of class, [the petitioner] always takes the time to wish students a good day and encourages us to stay strong.

It is clear from the letters by [redacted] and [redacted] that they highly value the petitioner as a professor and admire the petitioner's teaching style. However, they failed to identify any original contributions of major significance in the field. Instead, they described the petitioner's contributions to their individual academic experiences. There is no indication from their letters that the petitioner's contributions have impacted or influenced the field as a whole beyond two students. Moreover, while the record of proceeding reflects that the petitioner was nominated for the [redacted] after the filing of the petition, there is no evidence demonstrating that the award is recognized beyond [redacted], so as to establish that the award is representative of original contributions of major significance in the field made by the petitioner. The fact that students of the petitioner hold him in high regard as a professor does not reflect an original contribution of major significance in the field.

While those familiar with the petitioner describe him as "knowledgeable," "honest," and "dependable," there is insufficient documentary evidence demonstrating that the petitioner has made original contributions of major significance in the field. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be significant. The AAO is 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.[6] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Further, 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 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters 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; *see also Matter of V-K-*, 24 I&N Dec. 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 of original contributions of major significance.

Again, 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

---

[6] *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.).

major significance in the field [emphasis added]." The AAO 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 unusually influential, or has otherwise risen to the level of contributions of major significance, the AAO 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, she concluded that the petitioner failed to established eligibility for this criterion. On appeal, the petitioner refers to the following documentation:

1. An article entitled, [redacted] May 2011, by the petitioner, [redacted]; and

2. A paper 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." Regarding item 1, as previously discussed under the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the article was published in May 2011, after the filing of the petition. Eligibility must be established at the time of filing. Therefore, the AAO will not consider this item as evidence to establish the petitioner's eligibility. 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 USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regarding item 2, the petitioner submitted a program from the [redacted] on Teaching Economics: Instruction and Classroom Based Research. Although the petitioner established that he authored a scholarly article, the petitioner failed to submit any documentary evidence demonstrating that the program is a professional or major trade publication or other major media, or that the paper was published in a professional or major trade publication or other major media.

Again, 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." The burden is on the petitioner to establish that he meets every element of this criterion. In this case, while the petitioner demonstrated that he authored two scholarly

articles, the one article was published after the filing of the petition, and the petitioner failed to establish that the second article was published in a professional or major trade publication or other major media.

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. 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.

On appeal, the petitioner references the two previously discussed recommendation letters from [redacted] and [redacted]. Regarding [redacted] letter, he indicated that the petitioner "did an excellent job working with students and teaching his course effectively." The AAO is not persuaded that effectively teaching a course is representative of a leading or critical role. Similarly, presenting a single presentation for students regarding the economic crisis is not demonstrative of a leading or critical role. Moreover, the petitioner failed to submit any other documentary evidence regarding his role at [redacted] The petitioner failed to submit, for example, any documentary evidence distinguishing his position as an adjunct professor from the other professors at [redacted] so as to establish that he performed in a leading or critical role. Finally, the petitioner failed to submit any documentary evidence demonstrating that [redacted] has a distinguished reputation.

Regarding the letter from [redacted], he failed to provide any evidence that the petitioner performed in a leading or critical at any organization or establishment. In fact, [redacted] briefly discussed the quality of the petitioner's teaching rather than the petitioner's role at an organization or establishment.

A review of the record of proceeding also reflects that the petitioner submitted a letter from [redacted] of Richmond, who stated that the petitioner "and eight students from [redacted] attended *An Afternoon at the* [redacted] a [redacted] of Richmond education program for business, finance and economics college students and professors." While the petitioner attended the event as a professor with the students, the petitioner failed to demonstrate that this single event is representative of a leading or critical role for [redacted] The petitioner failed to submit any documentary evidence reflecting that [redacted] significantly benefited as a result of the petitioner's attendance, so as to establish that the petitioner's role was leading or critical.

Furthermore, at [redacted] the petitioner submitted documentary evidence reflecting that he was a member of the [redacted] Committee that resolved disputed complaints by students regarding their grades. In addition, the petitioner submitted documentary evidence reflecting that he was the course coordinator regarding final exams for Economics 212. Finally, the petitioner submitted a letter from [redacted] who stated:

> [The petitioner] has been involved in various departmental academic activities. In this capacity, he has taught as well as conducted exams for a number of undergraduate and graduate courses, which include undergraduate micro and macro principles and graduate macro. He is also part of the committee that administers Senior Comprehensive Exams. Last year, he was a member of the departmental [redacted] Committee that arbitrates grade disputes between teachers and students.
>
> [The petitioner] was recently assigned the responsibilities of coordinating the forthcoming departmental seminar series. As a core full-time faculty at the economics department of [redacted], the contributions of [the petitioner] are valued.

While the petitioner served on two committees and coordinated a course, the documentary evidence submitted by the petitioner fails to reflect that the petitioner performed in a leading or critical role for [redacted] In fact, [redacted] indicated that the petitioner's contributions were "valued" rather than a leading or critical role. Even when compared to the role of [redacted] the [redacted], the petitioner was in a subordinate role. Furthermore, based on the documentary evidence, the petitioner's roles were limited to the Department of Economics rather than [redacted] as a whole. While the petitioner demonstrated that he did not only perform as a professor at [redacted] but that he also served on committees and coordinated a course for the department, the record falls far short in reflecting that he performed in a leading or critical role for [redacted]

The petitioner also submitted pages of the [redacted] *Handbook*, but failed to submit any independent, objective evidence demonstrating that [redacted] has a distinguished reputation. The AAO is not persuaded that every educational institution that boasts its history and accomplishments demonstrates a distinguished reputation. The petitioner failed to submit any documentary evidence, for example, that distinguishes [redacted] from other highly regarded colleges or universities.

The AAO notes that the record of proceeding also contains numerous teaching contracts between the petitioner and [redacted]. While the contracts reflect that the petitioner taught courses at [redacted], the documentary evidence fails to reflect that the petitioner performed in a leading or critical role. Moreover, the petitioner failed to submit any documentary evidence demonstrating that [redacted] has a distinguished reputation.

Although the petitioner demonstrated that he was employed by [redacted], and [redacted] the petitioner failed to establish that he performed in a leading or critical role

and that any of the establishments have a distinguished reputation consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

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

C. Final Merits Determination

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

In evaluating the final merits determination, the AAO 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 demonstrated that he has a Ph.D. in economics from the University of Paris X and has taught economics at the collegiate level. 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 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).

Although the AAO found 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 to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The petitioner submitted a letter from [redacted] who stated that the petitioner peer reviewed research works submitted by colleagues at [redacted] and the

[redacted]t in the 21st Century" at [redacted]. The petitioner also submitted the previously discussed letter from [redacted] who stated that the petitioner was "a member of the departmental [redacted] Committee that arbitrates grade disputes between teachers and students" at [redacted] The AAO notes that peer review is a routine element of the process by which articles are selected for publication in professional journals or for presentation at conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of professors or scholars who publish themselves in journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in 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, the AAO 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).

Although the petitioner failed to meet the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner only submitted one article, which was not about him relating to his work, that contained a few quotations made by the petitioner. Nonetheless, the petitioner's submission of a single article published less than two weeks from the filing of the petition is not reflective of the sustained national or international acclaim required of this highly restrictive classification.

Furthermore, while the AAO found that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner based his claims of eligibility almost entirely on 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. at 500, n.2. Again, none of the letters submitted on behalf of the petitioner reflect any original contributions of major significance made by the petitioner or evidence that the petitioner performed in a leading or critical role for establishments that have a distinguished reputation.

Regarding the petitioner's original research findings discussed under 8 C.F.R. § 204.5(h)(3)(v), as stated above, they do not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a economics professor of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

Moroever, although the AAO found that the petitioner failed to meet the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the AAO notes that the petitioner based his claim on a presentation that he failed to establish was published in a professional or major trade publication or other major media. Even if the petitioner demonstrated that the presentation was published, which he did not, the petitioner's submission of a single conference occurring approximately 16 months from the filing of the petitioner is not demonstrative 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).

Further, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at www.bls.gov/oco on July 11, 2011 and incorporated into the record of proceeding), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://www.bls.gov/oco/pdf/ocos066.pdf, also incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* Further, the OOH states specifically with respect to economists that a "master's degree usually is the minimum requirement for a job as an instructor in a community college. In most colleges and universities, however, a Ph.D. is necessary for appointment as an instructor. A Ph.D. and publications in academic journals are required for a professorship, tenure, and promotion." *See* http://www.bls.gov/oco/pdf/ocos055.pdf, incorporated into the record of proceeding. This information reveals that original published research and publications, whether arising from research at a university or private employer, does not set the researcher apart from faculty in the petitioner's field.

Finally, the AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his 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 matter, the evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as a professor of economics. The regulation at 8 C.F.R. § 204.5(h)(3) requires "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that he has taught at three universities or colleges in the United States, the petitioner failed to submit any documentation consistent with or indicative of sustained national or international acclaim.

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. In this case, the petitioner has not established his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was among that small percentage at 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.