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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUL 29 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:

[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 January 20, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

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

**I. Law**

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

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

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003);

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[1] Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

*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).

## II. Analysis

### *A. Evidentiary Criteria*

This petition, filed on May 14, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a postdoctoral research associate. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3). [2]

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

At the time of the initial filing of the petition, counsel claimed the petitioner's eligibility based on the citation of the petitioner's work by others. The director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) and indicated that citations do not qualify for this criterion and requested the petitioner to submit published material about the petitioner relating to his work. In response, the petitioner failed to address this issue or submit any documentary evidence for this criterion. In the director's decision, he found that the petitioner failed to submit evidence for this criterion. On appeal, in counsel's brief, he 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.

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

The director determined that the petitioner failed to establish eligibility for this criterion because the documentary evidence did not reflect sustained national or international acclaim. 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 director for this criterion.

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

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

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

In the director's decision, he concluded that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

> The fact that [the petitioner] has been invited to present his research findings at the most prestigious scientific conferences in the field, combined with the fact that he has published approximately 80 publications in prestigious and peer-reviewed journals, the fact that these publications have been cited over 280 times in the top most journals in the field and by respected researchers from all over the world in the field clearly illustrates that [the petitioner] has made original scientific and scholarly, contributions of major significance to the field of his endeavor.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

As it relates to counsel's reference to the petitioner's published articles as evidence to meet this criterion, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner's scholarly articles will not be considered under this criterion, they will be addressed under the next criterion. The scholarly articles are relevant to the criterion with regard to the impact they have had on the field which is demonstrated by citations.

Regarding the petitioner's work cited by others, at the time of the filing of the petition, counsel claimed:

> [P]eers, including experts in their respective fields, have extensively cited [the petitioner's] research in various leading, peer-reviewed, prestigious journals. . . . The fact that others in the field have cited [the petitioner's] work speaks for itself and is a testament to the outstanding and brilliant work that he is conducting.

In addition, the petitioner submitted four self-compiled lists of his purported citations of his work by others and indicated at the top of the documents that they reflected "Citation[s] Based on the ISI Web Knowledge." The petitioner also submitted screenshots from http://admin-apps.isiknowledge.com regarding the ranking of various scientific journals by ISI Web of Knowledge. However, the petitioner failed to submit any documentary evidence from ISI Web of Knowledge supporting his assertions on his lists of self-compiled citations. 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)). The AAO notes that the self-complied lists claim that the petitioner's four articles were cited 17 times by others, with the highest cited article, "Nitrate Uptake, Nitrate Reductase Distribution and Their Relation to Proton Release in Five Nodulated Grain Legumes" (*Annals of Botany* (2002)), cited 10 times.

In response to the director's request for additional evidence, counsel claimed that the petitioner's work has "been cited by other scientists a total of 282 times." The petitioner also submitted five self-compiled lists of his purported citations of his work by others and again indicated at the top of the documents that they were "Based on the ISI Web of Knowledge." Once again, however, the petitioner failed to submit any documentary evidence from ISI Web of Knowledge supporting his lists of self-compiled citations. The AAO notes that the self-compiled lists claim that the petitioner's five articles were cited 29 times by others, with the highest cited article, "Nitrogen Losses from Fertilizers Applied to Maize, Wheat and Rice in the North China Plain" (*Nutrient Cycling in Agroecosystems* (July 2002))," cited 15 times. The AAO further notes that the petition was filed on May 14, 2009. However, counsel claimed that three of the articles that cited to the petitioner's work were cited after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l 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.

Further, the petitioner submitted a document and indicated on the top that it was a "Translation of Citations of Papers Published in Chinese Journals Based on China Citation Database Web (CNKI)." The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

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

In this case, the petitioner failed to submit "a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English" as required by the regulation at 8

C.F.R. § 103.2(b)(3). Because the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, a review of the purported foreign language documents fails to reflect that they are, in fact, from the "Citation Database Web (CNKI)," such as the listing of the website address or any other identifiers on the documents themselves. The AAO notes that the purported translation from CNKI claims that the petitioner's 35 articles were cited 236 times by others, with the highest cited article, "Advances in Researching the Rhizosphere pH and Phosphorous Utilization" (*Chinese Journal of Soil Sciences* (1992)), being cited 28 times. The AAO further notes that the petitioner indicated that 25 of the articles that cited his work were published in 2009, however the petitioner failed to include the months that they were published, so as to demonstrate that the articles were published prior to the filing of his petition.

On appeal, the petitioner submitted nine self-compiled lists of his purported citations of his work by others and again indicated at the top of the documents that they were "Based on the ISI Web of Knowledge." Yet again, however, the petitioner failed to submit any documentary evidence from ISI Web of Knowledge supporting his lists of self-compiled citations. The AAO notes that the self-complied lists claim that the petitioner's nine articles were cited 46 times by others, with the highest cited article, "Nitrogen Losses from Fertilizers Applied to Maize, Wheat and Rice in the North China Plain" (*Nutrient Cycling in Agroecosystems* (July 2002))," being cited 15 times. Further, counsel submitted a document and indicated on the top that it was a "Translation of Citation of Papers Published in Chinese Journals Based on China Citation Database Web (CNKI)," along with an affidavit from counsel stating that "[t]he documents, Citations for China regarding [the petitioner's] publications in China, translated from Chinese to English are accurate and correct." A review of the purported foreign language documents fails to reflect that they are from the "Citation Database Web (CNKI)," such as the listing of the website address or any other identifiers. In fact, it is the same document that was submitted in response to the director's request for additional evidence.

For the reasons discussed above, the petitioner failed to establish that his work has been cited by others in their own work. Nonetheless, while the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field.* In this case, according to the documentary evidence submitted on appeal, the petitioner's 44 articles have been cited 282 times with the highest article cited 28 times, with 36 articles cited 10 or less times, as well as 27 articles cited 5 or less times. The AAO is not persuaded that such citations are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for

this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field. The AAO is not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

On appeal, counsel also argues:

> [The petitioner] has been invited to present his significant findings at several prestigious international scientific conferences. It is noteworthy that [the petitioner's] work has been presented at the Conference, the and the to present his research findings. The fact that [the petitioner's] research findings have been selected for presentation to the scientific research community is evidence that his work is considered to be original and a major contribution of significance in the field of his endeavor. Furthermore, selection to present ones [sic] research also illustrates that, compared to others in the field of his endeavor his significant pioneering contributions are substantially greater accomplishments than those made by others in the field and also that his work has been nationally/internationally recognized.

A review of the record of proceeding reflects that the petitioner submitted a screenshot of the petitioner's abstract entitled, from Control-Release Fertilizers for the Predication of Nitrogen Release Curve," at the - on November 8, 2007. In addition, the petitioner submitted screenshots for the petitioner's abstracts entitled, "Tomato Growth, Nitrogen Uptake and Soil Mineral N as Affected by Controlled Release Fertilizers in South Florida" and "Effects of Temperature and Soil Type on N Release and Nitrification During the Incubation of Slow Release Fertilizers," at the Joint Annual Meeting of the SSA, ASA, and CSSA from October 5 – 9, 2008.

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 equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field, so as to demonstrate that the petitioner has made original contributions of major significance in the field. In fact, the petitioner submitted a recommendation letter from that discussed the petitioner's conference presentations at the Joint Annual Meeting of the GSA, SSSA, ASA, and CSSA in October 2008, and a recommendation letter from at the Third Conference in October 2004 that discussed the petitioner's presentations but failed to identify

how the petitioner's presentations can be considered of major significance in the field. For example, stated:

> In his presentation, [the petitioner] introduced a non-linear (NLIN) model to predict nitrogen release from slow release fertilizers. His model accounted for the effects of temperature and soil type on the rate of nitrogen release. His research work was very important in the study and application of slow release nitrogen fertilizers. [The petitioner] investigated the mechanisms controlling nitrogen release rates and patterns and the main environmental factors that affect them. [The petitioner's] data demonstrated that climatic conditions and soil type are important factors affecting the rates and patterns of nitrogen release. [The petitioner's] results demonstrated the critical importance of taking into account both climatic conditions and soil type in the development of new slow-release fertilizer formulations designed to control the release rate of nitrogen, so that the needs of the crop are optimally met and loss of nitrogen to the environment is minimized.

While identified an original finding made by the petitioner, he failed to discuss the significance of the petitioner's findings in the field, so as to demonstrate that the petitioner's original contributions are of major significance. Instead, generally stated that the petitioner's work was "very important" without indicating the impact of influence of his work in the field.

Similarly, stated:

> At the conference, [the petitioner] reported that nitrogen losses through volatilization are very high in rice production in the Region of China. Furthermore, [the petitioner] reported his research showed that the main factors determining the amount of nitrogen lost to the environment through volatilization are the concentrations of ammonium ions in surface waters and the intensity of sun light. In order to reduce these nitrogen losses and to improve the efficiency of nitrogen use by rice plants, [the petitioner] recommended changes in the times when nitrogen fertilization would be applied.
>
> [The petitioner's] presentation was a highlight of the Conference. His research has contributed significantly to a better understanding of how to improve the efficiency of nitrogen fertilizer use in rice production and in reducing the environmental impact of excessive nitrogen fertilizer use in rice production. . . . I can definitely say that [the petitioner's] report was received with great interest and that his work has contributed significantly to making agriculture more sustainable.

discussed the original findings and contributions of the petitioner but fell substantially short in demonstrating that the petitioner's work has been of major significance in the field. While indicated that the petitioner's "research has contributed

significantly," he failed to provide specific details explaining how the petitioner's research has been of major significance in the field. Instead, made general statements without demonstrating the significance of the petitioner's work in the field beyond the conference. failed to state, for example, that the petitioner's work has been widely applied in the field, so as to reflect that his original contributions have been of major significance.

The petitioner submitted other several recommendation letters, which simply mention that the petitioner made presentations at conferences without discussing how the petitioner's presentations can be considered original contributions of major significance in the field. For example, stated that "[h]is excellent research work is indicated by [the petitioner's] publication record, which includes numerous journal publications and conference proceedings about nitrogen research." Further, stated that "[h]e also actively participates and presents his research results in national and international academic conferences." Also, stated that "[the petitioner] has been invited to attend many national and international conferences such as the , the Congress, and the to present his research findings." While and stated that the petitioner made presentations at conferences, they failed to identify the presentations or conferences, as well as demonstrating that his presentations have been of major significance in the field. Moreover, although stated that the petitioner "has been invited to attend" conferences, he failed to establish that the petitioner actually attended and presented at the conferences, let alone that the petitioner's conference presentations resulted in any original contributions of major significance in the field.

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

A review of the record of proceeding reflects that the petitioner submitted additional recommendation letters. In this case, while the recommendation letters praise the petitioner for his work and discuss his original findings and research, they fail to indicate that his contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance, stated:

> [The petitioner's] research work has encompassed all aspects of nitrogen in agriculture and ecological system. He has investigated the N loss mechanisms and processes which include nitrification-denitrification, ammonia volatilization, N leaching and $N_2O$ emission. His research findings have helped to develop best management practices for N fertilization, and development and application of new fertilizers materials for improving N use efficiency in agriculture production.

While [redacted] indicated that the petitioner helped to develop best management practices and new fertilizers, [redacted] failed to specifically identify any best management practices or new fertilizers that were developed as a result of the petitioner's research. There is no indication that the petitioner's contributions have been of major significance in the field. Moreover, [redacted] stated:

> [The petitioner] made several significant findings . . . that includes: Nitrogen efficiency in soils in China, and developed several new methods such as nondisturbing micrometeorological technique, continuous airflow method, ($^{15}N_2O$+$^{15}N_2$)-N fluxes, lysimeter method and $^{15}N$ mass balance method in studying the main N cycle processes to monitor nitrogen cycling in main agricultural production areas in China. He evaluated the extent of N losses in rice, wheat and corn fields and evaluated factors that influencing such losses. [The petitioner] developed effective strategies for N fertilizer management practices for sustainable crop production in main agricultural areas of China that has helped to minimizing N loss into environment.

Again, although [redacted] indicated that the petitioner made "several significant findings," [redacted] failed to explain how such findings have been of major significance in the field. Instead, [redacted] generally stated that that the petitioner developed effective strategies without specifically describing the strategies and demonstrating that they have been of major significance in the field.

[redacted] summarized the petitioner's research and findings regarding the nitrification and denitrification potential in agricultural soils of China, the usefulness of slow-release and controlled-release nitrogen fertilizers on the growth of tomato and impact on nitrogen leaching in the United States, and the determination of whether temperature and soil type affect the nitrogen release rate from slow-release organic nitrogen fertilizers. In conclusion, [redacted] stated:

> It is apparent from the above summary of [the petitioner's] research that he has demonstrated that his contributions are so significant that many human beings benefit from his talents, innovative capability, and ingenious developments. Further, he is researching topics extremely valuable to the heath and success of major agricultural producers while understanding how to protect the environment at the same time. I believe he has further demonstrated that he *can* improve the US healthcare, economy, and society by solving issues important to both agriculture and society as a whole (water quality) [emphasis added]. There is no doubt that, if he were not admitted to US, works in the field of nitrogen response and fate would be adversely impacted.

While [redacted] discussed the original findings of the petitioner's research, he failed to demonstrate that the petitioner has made original contributions of major significance in the

field. Although indicated that the petitioner's contributions are significant to many human beings, he failed to establish exactly who has been impacted and how his findings have already affected the field. In fact, discussed the significance of the petitioner's work in terms of future applicability, such as the petitioner "can improve US healthcare, economy, and society." Without evidence indicating the petitioner's work is already being applied in the field, the petitioner cannot establish eligibility for this criterion based on possible or speculative outcomes.

stated:

> It was [the petitioner] who developed a first-order Model using the non-linear curve-fitting procedure NLIN to describe nitrogen release from the four release organic nitrogen fertilizers. Thus it was possible to identify four products with different N release curves. These depended on the chemical composition of a slow release fertilizer, soil temperature and soil types. [The petitioner's] research is *expected* to deliver a significant contribution to a more sustainable use of fertilizers in the U.S.A [emphasis added].
>
> [The petitioner] described iso-curves for the influence of soil temperature on N release from different N fertilizer products which deliver an essential contribution for an improving timing of N fertilizer applications. A particular benefit *can* be expected for vegetable production in South Florida with high temperature and high rainfall and sandy soils [emphasis added].

Likewise, speculated on the significance of the petitioner's work at some time in the future. Instead of demonstrating that the petitioner has previously delivered a significant contribution to a more sustainable use of fertilizers in the United States, simply indicated that the petitioner's research is "expected" to do so. Further, while briefly indicated the petitioner's research regarding the influence of iso-curves, he stated that a particular benefit "can" be expected for vegetable production without establishing that vegetable production has already been significantly influenced based on the petitioner's research, so as to demonstrate an original contribution of major significance in the field.

stated:

> [The petitioner's] research focuses on controlled-release fertilizers that supply just what plants need, no more no less. This prevents extra fertilizers from contaminating our ground water supply and protects the surrounding environment. His research *will* lead to cost-saving utilization by farmers and suburban yard owners to help make our environment cleaner [emphasis added].

Again, failed to identify a single cost-saving utilization by farmers and suburban yard owners that can be credited to the petitioner's research. Rather, indicated that the petitioner's research "will lead" to it. It is insufficient to meet the plain language of this

regulation based on possible implications, without evidence reflecting that the petitioner's work is actually being widely applied in the field.

stated:

> [The petitioner] carried out extensive research on the nitrogen cycle in Chinese agricultural field soils planted with wheat, corn and rice. [The petitioner] classified the main nine agricultural soils of China into three groups according to their denitrification potential. His research determined the extent of nitrification and denitrification of nitrogen fertilizers in crop-soil system and identified the main contributory factors. [The petitioner] developed an effective management strategy for fertilization to reduce nitrogen loss by nitrification and denitrification.
>
> [The petitioner] has focused his research on slow-release nitrogen fertilizers and controlled-release nitrogen fertilizers for vegetable production. [The petitioner] investigated several new slow-release organic nitrogen fertilizers and controlled-release N fertilizers by pot experiments, field experiments, and laboratory incubation experiments. All his research results are very useful in modifying the formulation of new slow-release and controlled-release N fertilizers for sustainable vegetable production in the United States.

In describing the petitioner's research, indicated that the petitioner's research was useful but did not indicate that his contributions have been of major significance in the field. In fact, failed to indicate that new slow-release and controlled-release N fertilizers have been modified using the petitioner's research findings. There is insufficient information establishing that the petitioner has made original contributions of major significance in the field.

indicated and summarized the petitioner's "most important scientific contributions." Regarding the characterization of soil minerals in the rhizosphere, stated that the petitioner "is a leading researcher in rhizoshpere research as evidenced by his numerous publications and citations in the 1990s on this topic." Regarding the study methods to improve cereal and vegetable qualities, stated that the petitioner's "innovative research is of both scientific and socio-economic significance" and "[h]is publications in this area have greatly advanced our knowledge of producing higher quality of food in an environment that is being changed by human activities." Regarding the examination of nitrogen cycling in natural and agricultural ecosystems, stated that "[h]is work greatly improved our understanding of these important processes in the ecosystems and consequently how these cycling will affect human health."

made general statements without providing any specific examples, so as to demonstrate that the petitioner has made original contributions of major significance in the field. Simply stating that the petitioner's research has been published and cited, is of both scientific and socio-economic significance, and has advanced and improved the field's knowledge and understanding is insufficient to establish that the petitioner has made original contributions of

major significance in the field. for example, failed to explain how the petitioner's research has significantly expanded the field's knowledge and understanding.

summarized the petitioner's research results from his work regarding nitrification and denitrification potential in agricultural soils of China, gaseous loss of nitrogen from fertilizers applied to maize and wheat growing on calcareous soil in North China Plain, and effects of slow-release and controlled release nitrogen fertilizers on tomato growth and N leaching. Instead of discussing the significance of the petitioner's work in the field, indicated that "[the petitioner] has the expertise to address these issues in that he has been working with slow-release materials for a number of years and thus he is uniquely qualified as a research scientist" and that "[h]e has in-depth and unique knowledge in his area of research that few if any have and would be an invaluable assess [sic] to this research area in the years to come."

Merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, 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). Regardless, failed to demonstrate that the petitioner has made original contributions of major significance in the field.

stated:

> [The petitioner's] contributions to this research area are very important. For example, a non-linear model to predict nitrogen release from slow release fertilizers being developed by [the petitioner] accounts for the effects of temperature and soil type on the rate of release of nitrogen. These two factors are critically important in the efficient use of applied fertilizers. Moreover, [the petitioner's] research is measuring the nitrogen release rate, nitrogen use efficiency and the loss of nitrogen through leaching from the root zone, and thus he is generating the data needed to validate the non-linear model. Clearly, [the petitioner's] research is contributing substantially to the theory and practice of the efficient use of controlled release and slow release nitrogen fertilizers.

In addition, discussed the petitioner's research findings regarding the mobilization of plant-available phosphorous in the soil, curbing environmental impacts of nitrogen and increasing its use efficiency by crops in China, reducing production of the potent greenhouse gas nitrous oxide, and making microelements available for crop growth in calcareous soils. While identified original contributions made by the petitioner through his research and findings, he failed to discuss the impact of the work on the field, so as to demonstrate original contributions of major significance in the field. Finally, indicated that the petitioner

"has made substantial contributions" regarding inflating fertilizer prices, fertilizer impacts on natural ecosystems, looming phosphate shortage, and mending the hole in the ozone shield and reducing greenhouse gas production. Although claimed that the petitioner has substantially contributed to solving these problems, he failed to provide specific examples explaining how the petitioner's research has influenced these issues. made general statements without establishing that the petitioner's work has been of major significance in the field. There is no evidence in the record of proceeding, for example, demonstrating that the petitioner's work has impacted the inflation of fertilizer prices or mended the hole in the ozone shield and reduced greenhouse gas production.

stated:

> [The petitioner] is currently investigating the effects of slow-release and controlled-release nitrogen fertilizers on tomato growth and nitrogen leaching into ground water. . . . [The petitioner] discovered that higher efficiency of nitrogen use, greater yields of tomatoes, and considerably less leaching of nitrate-nitrogen can be achieved by using slow-release and controlled-release nitrogen fertilizers. Significant improvements *can* be made in tomato production and in the reduction of nitrogen loss by applying slow-release and controlled-released N fertilizers [emphasis added]. [The petitioner] has developed a key approach regarding how to recommend the most suitable slow-release and controlled-release N fertilizers to tomato farmers for improving crop production and sparing the environment. [The petitioner] has shown that it is most important to evaluate the performance of slow-release N fertilizers in each individual soil under different conditions of moisture and temperature.
>
> [The petitioner] designed new devices to measure nitrogen release rates and nitrogen losses from slow-release fertilizers. [The petitioner] determined the nitrogen release rates in different soils at various soil temperatures. He developed a non-linear model to describe nitrogen release from slow-release nitrogen fertilizers, and then applied the model to evaluate the dynamics of nitrogen release from slow-release fertilizers under different conditions. This is a significant step toward understanding the characteristics of slow-release fertilizer under different environmental conditions. . . . Results from his research *will* be very useful in modifying and designing new fertilizers, and in further research to develop the best slow-release and controlled-release N fertilizers for vegetable production [emphasis added].

While discussed some of the petitioner's original research and discoveries, failed to demonstrate that they have been of major significance in the field. Instead, stated that "[s]ignificant improvements *can* be made in tomato production and in the reduction of nitrogen loss [emphasis added]" without establishing that the petitioner's research has already been credited with significantly impacting tomato production and reducing nitrogen loss. Likewise, in discussing the petitioner's design for new devices to measure nitrogen release rates and nitrogen

losses from slow-release fertilizers, stated that "[r]esults from his research *will* be very useful in modifying and designing new fertilizers [emphasis added]." Dr. failed to indicate that the petitioner's research has already been used to modify and design new fertilizers. It will not suffice to meet this regulatory requirement based on possible or future implications without evidence that his work has already been widely applied or utilized in the field.

in discussing the significance of the petitioner's work regarding the development of determining nitrification and denitrification with ($^{15}N_2O$+$^{15}N_2$)-N fluxes in incubation experiments and field experiments and its application to the studies of nitrification and denitrification in main upland soils of China, in the nitrogen cycle in crops-soil system of region, China in its effects on crop production and environment, and the development of a first-order kinetics model using the non-linear regression-fitting procedure NLIN to describe nitrogen release curve from slow-release organic nitrogen fertilizers, indicated that the petitioner's research is "important." However, failed to explain how the petitioner's research has widely impacted the field in a significant manner. general assertion that the petitioner's research is important does not necessarily equate to an original contribution of major significance in the field. failed to indicate the impact or influence on the field, so as to demonstrate that it has been of major significance.

As indicated above, the recommendation letters reflect that the petitioner has made original contributions based on his research. However, the letters fail to indicate that his contributions are of *major significance* in the field. Moreover, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the many descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings he has made are not currently being implemented in his field. Again, while the AAO acknowledges the originality of the petitioner's findings, the letters do not indicate that anyone is currently applying the petitioner's research findings, so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while the AAO does not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's research, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

While those familiar with the petitioner's work generally describe it as "important," "valuable," and "significant," there is insufficient documentary evidence demonstrating that the petitioner's

work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. 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.[3] 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 *major significance* in the field [emphasis added]." 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, although he found that the petitioner published scholarly articles in scientific journals, he found that the petitioner failed to establish eligibility for this criterion as the petitioner's work was not cited extensively by others and did not garner any national or international attention. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO withdraws the findings of the director for this criterion.

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

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

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

At the time of the initial filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on his roles as an assistant professor at various establishments such as the , the the as well as his position as within the Specifically, counsel referred to the previously discussed recommendation letters as evidence of the petitioner's leading or critical roles. The director issued a request for additional evidence, including a detailed description of the petitioner's role as an assistant professor and deputy director. In response, counsel only addressed the petitioner's role with . The director found that the petitioner's role with , as well as his position as a postdoctoral associate in the failed to reflect that the petitioner's roles were leading or critical. On appeal, counsel argues:

> [O]ver the course of a seven (7) year period, [the petitioner] served as an in the at the prestigious . . . . These positions are both leading and critical roles.

Again, counsel failed to address any of the petitioner's previously mentioned roles other than his role as an and for ISS within The AAO, therefore, considers counsel's initial claims of the petitioner's roles with the universities and institutions to be abandoned and will not further discuss this issue on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2. Regardless, the AAO notes that a review of the recommendation letters fail to demonstrate that petitioner performed in a leading or critical role pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Moreover, while the petitioner submitted screenshots from the websites of the universities and institutions, the petitioner failed to submit independent, objective evidence of their distinguished reputations.

Regarding the petitioner submitted a letter from and of who stated:

> [The petitioner] was a key performer in several major national projects funded by the

* * *

> During his employment in our Institute, he served as the and The is one of the key departments in our Institute. In his role as [the petitioner] investigated the trends in leading edge research in soil and plant nutrition in the most advanced countries. Also, [the petitioner] sought information on how state, national and international cooperative projects were organized, coordinated, led and managed to assure efficient use of scarce human and financial resources and the timely accomplishments of objectives. This information informed the actions he took to strengthen his Department.

Although indicated that the petitioner "was a key performer," he failed to demonstrate that the petitioner performed in a leading or critical role for The petitioner failed to submit any documentary evidence comparing his roles and responsibilities to the other scientists or employees of The petitioner failed to submit, for example, an organizational chart or other similar documentation that demonstrated the leading or critical role of the petitioner. Moreover, while the petitioner served as the within a single department at of the petitioner failed to establish that his roles were leading or critical to as a whole. In fact, according to the screenshots from website submitted by the petitioner, there are "five Academic Divisions, 108 scientific research institutes, over 200 science and technology enterprises, and more than 20 supporting units including one university, one graduate school and five documentation and information centers." The petitioner failed to establish that his performance as a was leading or critical compared to the other 107 "scientific research institutes" within , including the director of his department and the director's deputy directors of other departments within . The AAO notes that the screenshots indicate that " Clearly, the president of who has a staff of over 58,000, performs in a far more leading or critical role when compared to the role of the petitioner. Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the leading or critical role be "for organizations or establishments that have a distinguished reputation." As indicated, the only documentary evidence submitted by the petitioner regarding was screenshots from its own website. The petitioner failed to submit independent, objective evidence reflecting that has a distinguished reputation. Moreover, the screenshots only provide background information and missions of the establishment but fails to provide any evidence that has a distinguished reputation.

Moreover, even if the petitioner demonstrated that he met every element of this criterion regarding 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)(viii) requires the petitioner to perform in a leading or critical role with more than one organization or establishment. 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.[4]

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

***B. 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 two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in 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 reviewed some manuscripts, authored several scholarly articles, and has conducted research in his field of endeavor. 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

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[4] *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).

"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 documentary evidence reflecting that he has served as a member of the review board for *Pedosphere*, reviewed 12 manuscripts for the *Journal of Soil Science* and reviewed a manuscript for *Agriculture, Ecosystems, and Environment*, the *Journal of Environment Management*, and the *Journal of Plant Nutrition and Soil Science*. 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).

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

1. – Appointed member of the advisory board for fertilization at the working group on agriculture ; of the Agenda 21 for the Editorial board member for *Encyclopedia of Soil Science*, *Journal of Plant Nutrition*, *Journal of Agronomy and Crop Science*, *Precision Agriculture*, *AgroPrecise*, *Brassica*, *Polish Electronic Journal of Agriculture*, *FAL-Agricultural Research*; *Pedosphere*, *Egyptian Journal of Desert Ranch*, and *Arab Journal of Biotechnology*;

2. – Reviewer for *Journal of Hydraulic Engineering*, *Critical Reviews in Environment Science and Technology*, *Journal of Irrigation and Drainage Engineering*, *Water Resources Research*, *Journal of the American Water Resources Association*, *Journal of Environmental Engineering*, *Journal of Water Resources Planning and Management*, *Coastal Engineering*, *The West Indian Journal of Engineering*, and *Soil Science Society of America Journal*; Reviewer for the New Jersey Sea Grant Program, Hydrology Program at the National Science Foundation, and Groundwater Contamination and Control; and

3. for *Bioresource Technology*, *Chemosphere*, *Ecology Letters*, *Environmental and Experimental Botany*, *New Phytologist*, *Oecologia*, *Plant and Soil*, *Plant, Cell, and Enivironment*, *Restoration Ecology*, *Science of Total Environment*, *Tree Physiology*, and *Zhejiang University Science*;

The AAO also determined that the petitioner met the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). A review of the documentary evidence reflects that the petitioner submitted 32 scholarly articles that were published at the time of the filing of the petition. However, when compared to the authorship of the petitioner's references, it appears that his references are far above the accomplishments of the petitioner. For example:

1. – 136 publications;

2. – 352 publications;

3. – 307 publications;

4. – 85 publications, including 3 books and 4 book chapters; and

5. – 96 publications, including 4 book chapters.

Although the petitioner met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the moderate publication of such articles demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is inherent to scholars, the AAO will also evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the

petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner failed to submit sufficient documentary evidence demonstrating that his work has ever been cited by others. Regardless, the AAO is not persuaded by the purported claim that the petitioner's highest cited article was cited 28 times is sufficient to demonstrate that his article, as well as his other less cited articles, have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

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.

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 postdoctoral research associate. 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 has conducted routine research and published his findings in journals, the record is not 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.