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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**

B<sub>2</sub>

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:

MAR 11 2011

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on November 19, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). We note that at the time of the original filing of the petition, the petitioner claimed eligibility for seven of the ten criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, the petitioner claimed eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). In his denial, the director addressed each of the petitioner's claimed criteria and found that the petitioner established eligibility only for the scholarly articles criterion. On appeal, counsel addressed only five of the criteria – the awards criterion, the membership criterion, the judging criterion, the original contributions criterion, and the scholarly articles criterion. As counsel failed to contest the decision of the director or offer additional arguments for the leading or critical role criterion and high salary criterion, we will not further discuss these criteria on appeal. Accordingly, we consider these issues to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005).

## **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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

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

- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,"

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

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

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on April 23, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a researcher in optometry. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

The director found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on his receipt of the [REDACTED] Fellowship from the American Optometric Foundation (AOF) for the [REDACTED] and [REDACTED] academic years.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. The burden is on the petitioner to establish that he or she is eligible for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); section 291 of the Act, 8 U.S.C. § 1361. Not only must the petitioner demonstrate his receipt of prizes or awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence. In other words, the petitioner must establish his prizes or awards are recognized nationally or internationally beyond the awarding entities.

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

The petitioner submitted two letters from the AOF informing the petitioner that his applications for the [REDACTED] were approved. In addition, the petitioner submitted an article entitled, "[REDACTED] Fellowships," from [REDACTED] a publication from the American Optometric Student Association, that indicated that the [REDACTED] "are selected on the basis of excellence in scholarships, research and teaching" and were "established to provide opportunities to graduate students who wish to pursue careers in optometric research and education." Moreover, the petitioner submitted a snippet entitled, "American Optometric Foundation Awards [REDACTED] [REDACTED] from [REDACTED] that indicated that the [REDACTED] "was established in [REDACTED] to provide opportunities to graduate students who wish to pursue careers in optometric research and education." Finally, the petitioner submitted screenshots from [www.medicalnewstoday.com](http://www.medicalnewstoday.com) and [www.visioncra.org](http://www.visioncra.org) that indicated that "[t]he [REDACTED] are awarded to encourage the most talented graduate students in physiological optics and vision science programs to pursue full-time careers in optometric research and education in schools and colleges of optometry" and they "support postgraduate research in the areas of physiological optics, vision science, and related fields."

Although the documentary evidence submitted by the petitioner reflects that the [REDACTED] [REDACTED] are selected based on excellence in scholarships, research, and training, the petitioner failed to establish that the [REDACTED] are *nationally or internationally recognized* for excellence in the field. Furthermore, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, postdoctoral fellowships, student awards, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor.

A review of the record of proceeding reflects that the petitioner also submitted the following documentary evidence:

1.

[REDACTED]

2.

[REDACTED]

3.

[REDACTED]

4.

[REDACTED]

5. [REDACTED]
6. [REDACTED]
7. A certificate for the petitioner from the University of Houston for the National Optometric Student Association Award; and
8. Various certificates from the Elite School of Optometry in India for the petitioner's academic performances.

Regarding items 1 – 6, the petitioner failed to submit primary evidence of his receipt of these prizes or awards or evidence that primary or secondary evidence does not exist pursuant to the regulation at 8 C.F.R. § 103.2(b)(2). The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

(i) The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

As indicated above, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same

regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, the petitioner relies on the submission of emails, a photograph of a plaque, and excerpts of programs as evidence of his receipt of the claimed awards. The petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. As the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(2), the evidence is not probative and will not be accorded any weight in this proceeding.

Nonetheless, the petitioner failed to submit any documentary evidence regarding any of the items listed above, so as to establish that they are nationally or internationally recognized prizes or awards for excellence in the field. Merely submitting documentary evidence reflecting receipts of prizes or awards is insufficient to establish that the prizes or awards are nationally or internationally recognized for excellence. We note that the petitioner's documentary evidence reflects fellowships and student awards. Again, academic study is not a field of endeavor, but training for a future field of endeavor. Therefore, the petitioner failed to demonstrate that he has received any nationally or internationally recognized prizes or awards for excellence in his field.

As discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the prizes or awards be nationally or internationally *recognized* in the field of endeavor, and it is the petitioner's burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the prizes or awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed eligibility based on his election as a fellow of the American Academy of Optometry.

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

constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he is a fellow of the American Academy of Optometry. As evidence that membership with the American Academy of Optometry requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields, the petitioner submitted the following documentation:

1. A document entitled, "Candidacy for Fellowship in the American Academy of Optometry";
2. Screenshots from [www.aaopt.org](http://www.aaopt.org) regarding the bylaws;
3. A letter from [REDACTED] of Education and Member Relations for the American Academy of Optometry; and
4. A letter from [REDACTED] Southern College of Optometry.

A review of the documentary evidence listed above reflects that membership with the American Academy of Optometry "requires demonstration of professional competence." In addition, according to item 2:

Fellowship shall be open to all optometrists in professional practice according to Academy standards, and to scientists, educators, librarians, administrators, editors, and others who have accredited themselves and demonstrated a significant contribution to optometry and/or vision science by their service. Fellows have the right to vote and hold any elective or appointive position in the Academy.

We are not persuaded that an association that is open to all optometrists in professional practice or other select individuals who have accredited themselves and demonstrated a significant contribution to optometry and/or vision science is reflective of an association that requires outstanding achievements of its members. Furthermore, a review of the documentary evidence submitted by the petitioner reflects that an applicant for fellowship must complete an application, submit written material, and take an oral exam during the annual meeting. Based on the documentary evidence submitted by the petitioner, we are not persuaded that merely submitting written material and taking an oral exam are indicative of outstanding achievements in the field.

Moreover, although [REDACTED] claimed that "[t]he term 'significant contribution' is synonymous with the term 'outstanding achievement,'" a significant contribution is not necessarily an outstanding achievement. While the petitioner submitted screenshots of other unrelated awards that use the terms "outstanding achievement" and "significant contribution" interchangeably, the

petitioner must demonstrate that membership with the American Academy of Optometry requires outstanding achievements of its members, regardless of the requirements of unrelated associations in other fields, such as the submitted Michigan Council of Teachers of Mathematics Award and the American Institute of Fishery Research Biologists Award. In this case, the petitioner failed to establish that membership with the American Academy of Optometry requires outstanding achievements of its members. Merely submitting documentary evidence that generally refers to the terms "significant contribution" or "outstanding achievement" is insufficient to demonstrate eligibility for this criterion without evidence that outstanding achievements are required for membership with a particular association. For example, [REDACTED] failed to specifically identify any outstanding achievements made by the petitioner that qualified him for membership as a fellow with the American Academy of Optometry. Rather, [REDACTED] generally indicated that: "I can confidently state that Fellowship of the [American Academy of Optometry] demands outstanding contributions in vision research / optometry." Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>3</sup> The lack of specific information gives the AAO no basis to accept the assertion that membership with the American Academy of Optometry requires outstanding achievements. In addition, the documentary evidence submitted by the petitioner fails to reflect that membership with the American Academy of Optometry is judged by recognized national or international experts in their disciplines or fields.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires the petitioner to demonstrate membership in more than one association. Therefore, even if we were to find that the petitioner's membership with the American Academy of Optometry was a qualifying membership, which we do not, the petitioner established membership with only one organization. As such, the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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

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

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

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

The 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.*

The director found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted documentary evidence of the citation of his work by others, presentation of his work at conferences and meetings, and 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 scientific or scholarly-related contributions "of major significance in the field."

Regarding the petitioner's work cited by others, the petitioner submitted documentary evidence from [www.scopus.com](http://www.scopus.com), <http://cel.isiknowledge.com>, and [www.google.com](http://www.google.com), as well as some of the articles that cited the petitioner's work. A review of the documentary evidence submitted by the petitioner reflects that the petitioner's work was cited approximately 92 times. We note here that some of the citations from the websites reflect instances where the petitioner's work was 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 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Therefore, we will not consider the citations of the petitioner's work that occurred after the filing of the petition.

A review of the record of proceeding reflects that the petitioner's two most cited articles in *Investigative Ophthalmology & Visual Science* and [REDACTED] in *Eye & Contact Lens: Science & Clinical Practice*) were cited 29 and 26 times respectively. The petitioner's remaining cited articles were cited 12 times or less, including one article [REDACTED] that was cited only one time. We note that the petitioner failed to submit any documentary evidence reflecting that two of his articles [REDACTED] in *Optometric Management*) have ever been cited.

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 in the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been of major significance in the field. In this case, we are not persuaded that the total number of 92 citations is reflective that the petitioner's work has been of major significance in the field. Furthermore, a review of the articles that cited the petitioner's work fail to reflect that the petitioner's work has been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of major significance in the field. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how he has significantly contributed to his field as a whole.

Regarding the petitioner's presentations, the petitioner submitted documentary evidence that he presented his work at conferences and meetings, such as the New Jersey Academy of Optometry and 2001 - 2003 American Academy of Optometry. We note here that the petitioner submitted documentary evidence reflecting presentations that the petitioner was scheduled to deliver after the filing of the petition, such as the 12<sup>th</sup> International Ocular Surface Society Meeting on May 2, 2009, and the American Academy of Optometry Meeting on November 13, 2009. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

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

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

Dr. [REDACTED] Professor at the Department of Ophthalmology at Harvard Medical School, stated:

[The petitioner's] research into dry eye disease focuses on identifying specific genes or proteins that are involved in causing the damage to the front surface of the eye. His research has already been helpful in developing better treatment methodologies for dry eye disease as well as better diagnostic testing.

\* \* \*

The goal of [the petitioner's] research is to determine which specific molecules cause this constant state of inflammation of the eye. There are very few researchers in the United States or in the world that perform this type of research into dry eye disease. These experiments are difficult to perform from the stage of collecting samples (tear fluid or cells) up to the stage of actually testing for genes or proteins. Discovering the specific molecules that cause inflammation in the eye will help identify better treatment and testing options.

Although [REDACTED] stated that the petitioner's "research has already been helpful in developing better treatment methodologies," [REDACTED] failed to identify any "treatment methodologies" that have been utilized or applied in the field, so as to establish that the petitioner's contributions have been of major significance in the field. In fact, [REDACTED] letter fails to provide specific details to explain how the petitioner's research has currently impacted his field, so as to be considered contributions of major significance. For example, [REDACTED] stated that the petitioner's research "will help identify better treatment and testing options [emphasis added]." Eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Dr. [REDACTED] Professor at the University of California at Berkeley, stated:

[The petitioner] is an expert at the forefront of dry eye disease research. He has used innovative techniques in his research that have provided us a greater understanding of the biological effects of dry eye disease. More specifically, [the petitioner] has been credited with the discovery that human beta-defensin-2 (hBD-2) is involved in surface eye diseases. His discovery is remarkable because it gives us a greater understanding [of] surface eye diseases and this could lead to new approaches for treatment. Because of the aging population in the USA, researching dry eye disease is of the utmost importance.

\* \* \*

Based on his previous discovery related to human beta-defensin-2 (hBD-2), [the petitioner] developed a second study in order to identify which genes or proteins should be studied in patients with inflammatory surface diseases of the eye. In his groundbreaking research, [the petitioner] used a unique technique called gene array to study multiple genes simultaneously. The results of this influential study not only guide researchers in identifying target genes and proteins, but also provide more information into the occurrence of Interleukin-1 (IL-1) in dry eye disease. As inflammatory agents, such as IL-1, are identified, better treatments and possibly a cure for dry eye disease can be developed.

Similar to [redacted] letter, [redacted] failed to indicate that the current impact or influence of the petitioner's work in the field, so as to establish that his contributions are of major significance. For example, [redacted] stated that the petitioner's "discovery is remarkable because it gives us a greater understanding surface eye diseases and this *could* lead to new approaches for treatment [emphasis added]." Again, while we acknowledge the originality of the petitioner's findings, [redacted] does not indicate that anyone is currently applying the petitioner's research findings and only indicates that it *could* lead to treatment. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Moreover, although [redacted] indicated that the results of the petitioner's "study not only guide researchers in identifying target genes and proteins" and "possibly a cure for dry eye disease can be developed," [redacted] failed to indicate any genes or proteins that have been identified as a result of the petitioner's research, so as to establish that it has been of major significance in the field.

Dr. [redacted] at The Ohio State University College of Optometry, stated:

Dry eye disease is a disease of the tear fluid in the eyes, thus current dry eye disease therapy consists mainly of artificial tear drops. These artificial tear drops do not cure the disease but rather suppress the symptoms of the disease and allow patients to feel relief for short periods of time. The symptoms of eye irritation are a product of the damage this disease causes to the front surface of the eyes. [The petitioner's] innovative research has begun to identify the specific genes and proteins that are involved in causing the damage to the front surface of the eye. As a result, his research has already begun to help develop better treatment methodologies for dry eye disease.

While [redacted] indicated that the petitioner's "research has begun to identify the specific genes and proteins that are involved in causing the damage to the front surface of the eye," [redacted] failed to explain or identify any specific genes or proteins. Moreover, while [redacted] indicated that the petitioner's "research has already begun to help develop better treatment

methodologies for dry eye disease," [REDACTED] failed to specify any treatment that was developed, so as to establish the significance of the petitioner's work in the field.

[REDACTED] Professor at the Department of Ophthalmology at Harvard Medical School, stated:

Current eye therapy consists largely of artificial tear drops. These drops do not cure the disease, but rather mask the painful symptoms for a short period of time. At the forefront of [the petitioner's] research is the goal to develop better treatment methodologies, or a cure, for dry eye disease. Thus, [the petitioner] studies what kinds of genes or protein changes occur in dry eye patients. This type of research involves complex molecular biological experiments, including collecting tear samples of cells from the front surface of the eye. These experiments are difficult, from collecting the necessary samples to the stage of testing for genes or proteins. In his discovery of the presence of the human  $\beta$ -defensin-2 (hBD-2) molecule, [the petitioner] demonstrated his extraordinary ability in vision research.

Although [REDACTED] indicated that the petitioner discovered the presence of the human  $\beta$ -defensin-2 (hBD-2) molecule, [REDACTED] failed to indicate the significance of this discovery beyond the petitioner's own work. Furthermore, while [REDACTED] described the petitioner's research as difficult and complex, 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 certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998).

[REDACTED] of the Department of Ophthalmology at the University of Texas Southwestern Medical Center, stated:

[The petitioner] has made significant developments in identifying the biological causes and effects of dry eye disease. . . . [The petitioner] showed that the gene interleukin-1 receptor-1 (IL-1-R1) caused unique changes in the gene expression of inflammatory molecules. These results are significant because they have implications for developing anti-inflammatory therapy for dry eye disease that targets IL-1 receptors. Current dry eye therapy consists of eye drops which do nothing to cure the disease, but instead mask the disease's symptoms for a few short hours. Identifying anti-inflammatory agents in the eye, therefore, will help researchers develop better treatments for dry eye disease.

[REDACTED] briefly described the petitioner's original findings and research, but failed to indicate that the petitioner's work has been of major significance in the field. [REDACTED] generally indicated that "they have implications for developing anti-inflammatory therapy for dry eye disease" without indicating if anti-inflammatory therapy has been developed as a result of

the petitioner's work, so as to establish that the petitioner has made original contributions of major significance in the field.

While those familiar with the petitioner's work generally describe it as "significant," "pioneering," and "groundbreaking," the letters contain general statements that lack specific details to demonstrate that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

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

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers'

statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner's work has been original, unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

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, he concluded that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we agree with the findings of the director for this criterion.

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

### ***B. Final Merits Determination***

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

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has garnered some student awards, authored a few scholarly articles, has served as a peer reviewer for a professional journal, and has had some of his work cited by others in the field. However, the accomplishments of the petitioner fall far short of establishing that he "is one

of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the 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 petitioner failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner claimed eligibility based on awards won at the academic level. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and fellowships cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for fellowships is limited to other graduate or postgraduate students. Experienced experts do not compete for fellowships and competitive postdoctoral appointments. Therefore, awards that are limited to students, like those claimed by the petitioner, are not indicative of someone who is at the top of his or her field.

Moreover, awards derived from student competitions do not reflect that "small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in student status or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>4</sup> Likewise, it does not follow that an optometry

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<sup>4</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

researcher, like the petitioner, who has had success at student level competitions, should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

While we determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), we note that the petitioner minimally met the requirement based on the petitioner's submission of documentary evidence from *Optometry* that indicated that the petitioner served as a referee during 2007 – 2008. Although the petitioner submitted other documentary evidence for the judging criterion, a review of the documentary evidence fails to reflect that he served as a judge of the work of others. For example, the petitioner submitted several emails that merely thanked the petitioner for agreeing to review articles. Notwithstanding that the petitioner failed to submit primary evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(2), emails that merely request or thank the petitioner for agreeing to review manuscripts is not sufficient evidence establishing that he actually participated in the review or judging process. In addition, in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted a letter from Dr. [REDACTED] of *Optometry and Vision Science*, and [REDACTED] *Investigative Ophthalmology & Visual Science*, who merely indicated that the petitioner served as a reviewer. Neither letter indicated what the petitioner reviewed, how many manuscripts were reviewed, or when the reviews took place.

Nonetheless, an evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. We note that peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at scientific conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists 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

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Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

conference, we cannot conclude that the petitioner 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).

Moreover, while the record of proceeding contains documentary evidence reflecting that the petitioner served as a reviewer for *Optometry*, there is no evidence reflecting that the petitioner reviewed manuscripts of acclaimed optometry researchers who are at the top of the field. *Cf.*, *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). We cannot conclude that the petitioner's claimed occasional and minimal participation as a manuscript reviewer demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, Dr. [REDACTED] of *Optometry and Vision Sciences*, has clearly distinguished himself from the petitioner based on his editorial position and experience.

We also determined that the petitioner met the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). A review of the record of proceeding reflects that the petitioner submitted documentary evidence reflecting that he authored nine articles, including seven presentation abstracts. We note that the petitioner submitted four articles and four abstracts that were authored after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The petitioner has not established that the petitioner's minimal authorship of such articles and abstracts demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to researchers, we will evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other optometry researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that his work was cited approximately 92 times, and his most cited article was cited 29 times. While the citations demonstrate some interest in his published work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Further, although the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner submitted recommendation letters that

praised the petitioner for his work. However, such letters cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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 beneficiary'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. The submission of letters from individuals, especially when they are colleagues of the petitioner, supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008).

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). We note that even though we found that the petitioner failed to meet the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner only claimed eligibility based on membership with one association, of which at least two are required.

The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated his "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989).

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

### **III. Conclusion**

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

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

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

**ORDER:** The appeal is dismissed.