

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
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Services

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DATE: **SEP 27 2011** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:

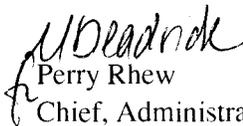
SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on January 27, 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.

In the director’s decision, he found that the petitioner failed to establish 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 published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), 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). Moreover, the director found that the petitioner met the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the director found that the petitioner failed to submit any evidence relating to the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). On appeal, the petitioner argues that he meets the membership criterion, the published material criterion, the judging criterion, and the leading or critical role criterion. Moreover, the petitioner stated that he “agrees with the director on his decision” regarding the awards criterion, the scholarly articles criterion, the artistic display criterion, the high salary criterion, and the commercial successes criterion. Accordingly, the AAO considers these criteria to be abandoned and will not further discuss them on appeal. *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 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,"

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).

8 C.F.R. § 204.5(h)(2), and “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on August 26, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a computer scientist. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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.

A review of the record of proceeding reflects that the petitioner initially claimed eligibility for this criterion based on his inclusion in the 2009 Edition of *Who’s Who in America*. 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

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

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.

The petitioner submitted a letter from [REDACTED], who congratulated the petitioner for his selection of his "[REDACTED]" The petitioner also submitted a copy of his biography that was included in the 2009 edition. In addition, the petitioner submitted an email from [REDACTED] stated:

[REDACTED] Who publications aim to profile those who hold key positions or have made noteworthy accomplishments within all significant fields of endeavor. Our editorial staff screens all submissions. The selection criteria are: 1. Position of leadership held at significant organization, 2. educational attainments, 3. noteworthy achievement in creative works (writings, music, television, movies, etc.), 4. significant publishing or public speaking experience, and 5. contributions to the community.

In the case here, the petitioner failed to establish that noteworthy accomplishments equate to outstanding achievements. The AAO is not persuaded that the selection criteria, such as occupation status or educational experience, for *Who's Who in America* is consistent with the plain language of "outstanding achievements" pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The noteworthy achievements standard required by Marquis Who's Who® is significantly less than the higher standard of outstanding achievement required by the regulation.

Furthermore, the petitioner submitted a screenshot from www.marquiswhoswho.com that stated:

Since 1899, [REDACTED] has remained the standard for reliable and comprehensive biographical data. Each year, we strive to continue the tradition established by our founder, [REDACTED] over 100 years ago with the first [REDACTED] in America [emphasis added].

The family of [REDACTED] publications presents unmatched coverage of the lives of today's leaders and achievers from both the United States and around the world, and from every significant field of endeavor [emphasis added].

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "the alien's membership in *associations* [emphasis added]." Based on the documentary evidence submitted by the petitioner, [REDACTED]® is a set of publications, i.e., [REDACTED] *in America* and [REDACTED] rather than an association. The petitioner failed to establish that [REDACTED] meets the plain language of the regulation requiring membership in associations.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the outstanding achievements are "judged by recognized national or international experts in their

disciplines or fields.” The petitioner failed to submit any documentary evidence demonstrating that the editorial staff is comprised of recognized national or international experts in their disciplines or fields.

The petitioner also claimed eligibility for this criterion based on his invitation “to join as an editorial member of Seven (7) different online journals and is currently an [REDACTED] to the [REDACTED].” The regulations contain a separate criterion regarding the judging of the work of others pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The AAO will not presume that evidence relating to or even meeting the judging 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 editorial experience will not be considered under this criterion, the judging criterion will be addressed later.

On appeal, the petitioner also claims eligibility for this criterion based on his invitation “to join the [REDACTED] a public university, to develop and teach a course in [REDACTED] at the graduate level which requires outstanding achievements beyond the academic credentials in the field of computer science.” The petitioner submitted a purported email from [REDACTED] who stated:

Based on our telephone conversation, a comprehensive review of your application materials and our projected instructional needs, I would like to offer you the following initial course assignment (which will be BOTH development of the course in Fall 2009 and instruction of the course in Early Spring 2010).

Start Term (Development): Early Fall 2009 (August 24 – October 26, 2009)

The petitioner filed the petition on August 26, 2008. 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. Regardless, the petitioner failed to submit any documentary evidence demonstrating that he actually accepted and developed the course. Moreover, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “the alien’s membership in associations,” an offer of employment at [REDACTED] does not satisfy the elements of this regulation. Furthermore, the petitioner was offered employment based, in part, on the “projected instructional needs” of [REDACTED] rather than outstanding achievements of the petitioner. In addition, the petitioner failed to establish that his employment offer was judged by recognized national or international experts in their disciplines or fields.

For the reasons discussed above, the petitioner failed to demonstrate that he is a member of associations requiring outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields consistent with the plain language of

the regulation at 8 C.F.R. § 204.5(h)(3)(ii). It is the petitioner's burden to establish every element of this regulatory criterion.

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

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

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify

as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

The AAO notes that six of the petitioner’s seven documents were posted on the Internet. However, the AAO is not persuaded that postings and blogs on the Internet from printed publications, organizations, or Internet-based media outlets are automatically considered major media. The petitioner failed to submit any documentary evidence establishing that the websites are considered major media. In today’s world, many newspapers, businesses, and other media outlets post stories and information on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.”

Regarding item 1, the screenshot reflects a blog announcing that the petitioner will be one of the presenters at the Web2New York networking party rather than published material about the petitioner relating to his work. Furthermore, the petitioner failed to submit any documentary evidence establishing that <http://web2newyork.com> is major media.

Regarding item 2, the press release reflects information regarding iMedia Streams’ development of iPoint, iServe, and iMusic. While the press release quotes the petitioner, it is not about the petitioner relating to his work rather than iMedia Streams’ technology. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Moreover, the petitioner failed to indicate where the press release was published, and if it was published in a professional or major trade publication or other major media.

Regarding item 3, the petitioner failed to include the date and author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, a review of the screenshot merely lists a photograph of the petitioner and indicates that he is one of eight speakers at the E-Marketing Arts seminar. Also, the petitioner failed to submit any documentary evidence reflecting that <http://emarketingarts.com> is major media.

Regarding item 4, the petitioner failed to include the date and author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the screenshot is from the petitioner’s business, iMedia Streams, and reflects the petitioner’s description of the company rather than published material about the petitioner relating to his work. Further, the petitioner

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

failed to submit any documentary evidence establishing that www.imediaconnection.com is major media.

Regarding item 5, the screenshot reflects the debut of iPoint, iServe, and iMusic by iMediaStreams. In fact, the screenshot never mentions the petitioner let alone published material about him relating to his work. In addition, the petitioner failed to submit any documentary evidence demonstrating that www.emarketingandcommerce.com is major media.

Regarding item 6, the screenshot is about iMedia Streams seeking investment rather than published material about the petitioner relating to his work. Furthermore, the petitioner failed to submit any documentary evidence reflecting that www.mergermarket.com is major media.

Regarding item 7, the screenshot is a video clip of the petitioner's interview on the "[REDACTED]". Again, this regulatory criterion requires "published material" in professional or major trade publications or other major media and "the title, date, and author of the material." As a video clip from *YouTube*, as well as an interview on a television show, is not published material in professional or major trade publications or other major media, it clearly does not meet the plain language of this regulatory criterion.

On appeal, the petitioner submitted an article entitled, "[REDACTED]". 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. Nonetheless, the article is about cleaning negative material from *Google's* first pages. While the article quotes the petitioner, the fact remains that the article is not published material about the petitioner relating to his work.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In this case, the petitioner's documentary evidence fails to reflect any published material about him relating to his work in professional or major trade publications or other major media.

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.

Although the director determined that the petitioner participated as a judge of the work of others, the director ultimately concluded that the petitioner failed to establish eligibility for this criterion based on the absence of 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.

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 established eligibility for this criterion based on documentary evidence reflecting “that the petitioner’s work represents original scientific contributions of significance in his field.” The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scientific-related contributions “of major significance in the field.” 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). Although the director found that the petitioner’s original contributions were significant, he failed to find that the petitioner’s original contributions have been “of major significance in the field.” Upon review, the AAO finds the director’s decision must be withdrawn.

A review of the record of proceeding reflects that the petitioner submitted several recommendation letters from colleagues in the petitioner’s field. The authors of the recommendation letters indicate the original contributions of the petitioner. In fact, the letters are very similar in describing the petitioner’s contributions to the multimedia and data mining areas. For example, [REDACTED] stated:

[The petitioner’s] work in developing a new mathematical model that automatically personalizes Composite Multimedia Objects while adhering to both temporal and spatial constraints is outstanding and has demonstrated methods to reorganize composite multimedia objects.

* * *

Among [the petitioner’s] most significant and groundbreaking contributions to the field is the development of a dynamic method for manifesting composite multimedia objects. This innovative method enables the personalization of

composite multimedia objects based on the user credentials, profile and device being used.

However, when discussing the significance of the petitioner's work in the field, the authors of the recommendation letters fail to demonstrate that his original contributions have been of major significance in the field as a whole. Instead, the authors indicate that the petitioner's research was used by U.S. Department of Homeland Security and the Port Authority of New York and New Jersey. For example, the letters from [REDACTED] indicated that the petitioner's "original research was used as a part of a U.S. Department of Homeland Security project for disseminating information to first responders on their handheld devices." Moreover, [REDACTED] also indicated that the petitioner's "approach of using online multimedia techniques and data mining have allowed the Port Authority of New York and New Jersey first responders to receive instant customized information on their handheld devices which minimalize [sic] the information load and allowing accessibility to vital information in emergency situations." Although the letters reflect that the petitioner's research and work has been applied in the field by specific agencies or organizations, they do not reflect that his work has been of major significance in the field. The letters fail to indicate, for example, that the petitioner's work has been widely applied or implemented in the field rather than limited to select projects. In addition, the recommendation letters do not indicate that the petitioner's work has widely influenced or impacted the field as a whole, so as to demonstrate original contributions of major significance in the field.

Moreover, the authors of the recommendation letters made general statements without providing specific information to establish that the petitioner's contributions have been of major significance in the field. For example, [REDACTED] stated that the petitioner's "skills and expertise have enabled him to develop new concepts for online Multimedia and Data Mining that have led the scientific community in new directions." However, [REDACTED] failed to provide any specific examples supporting his claim that the scientific community was guided in a new direction based on the petitioner's work. Further, the letter from [REDACTED] as well as the others letter that refer to the petitioner's skills, indicate how the petitioner's skills or personal traits are original contributions of major significance to the field. 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 level of major significance 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 Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). Further, [REDACTED] stated that he "can confirm that it has contributed a great deal to the international body of knowledge related to Online Multimedia Systems." However, [REDACTED] failed to describe how the petitioner has greatly contributed to the international body of knowledge. The AAO cannot make a favorable determination for this criterion based on personal confirmations without any information describing how the petitioner's work has been of major significance in the field.

Furthermore, [REDACTED] refer to the pending applications of the petitioner's patents. For example, [REDACTED] stated:

This work has led to three patent applications by [the petitioner]. These are on Mining web modalities for online marketing and content ranking, a Cross Platform Digital Right Management system and Bridging the Communication Divide by Connecting Online and Offline User Behavior for Targeted Online Marketing.

Notwithstanding that the petitioner failed to submit any documentary evidence establishing that he has been awarded any patents, the AAO has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not state that the petitioner made a contribution of major significance in the field through his development of this idea.

In addition, the recommendation letters from [REDACTED] indicated that the petitioner has made presentations at conferences, seminars, and meetings. With the exception of [REDACTED], they failed to provide any further information regarding the presentations besides simply stating the petitioner was a presenter. In fact, [REDACTED] based his recommendation letter on a review of the petitioner's curriculum vitae without any prior knowledge of the petitioner's presentations. Regarding [REDACTED] he stated that "[t]he importance of his work is also demonstrated by the lively discussions usually following his conference presentations, which indicates interest from companies worldwide." The AAO is not persuaded that lively discussions following conference presentations are reflective of original contributions of major significance in the field. [REDACTED] failed to demonstrate, for example, how the lively discussions from the petitioner's presentations have resulted in the furtherance of computer applications throughout the field. Further, 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 impacted the field in a manner consistent of major significance. None of the authors state that they have cited to any of the petitioner's conference presentations or journal articles in their own work and provides no specific examples of any independent computer scientists who have applied the petitioner's findings in their work.

Finally, the AAO notes that the letters from [REDACTED] merely summarize the petitioner's experience and accomplishments without reflecting the significance of the petitioner's work in the field, let alone how the petitioner's work has been of major significance. While those familiar with the petitioner describe him as "distinguished," "outstanding," and

“extraordinary,” 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.⁴ 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, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion. Therefore, the AAO withdraws the decision of the director for this criterion.

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

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

The petitioner claimed eligibility for this criterion based on his role with his own company, [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. Based on a review of the record of proceeding, the petitioner submitted sufficient documentary evidence demonstrating that he

⁴ *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.).

performs in a leading or critical role for [REDACTED]. However, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the leading or critical role be “for organizations or establishments that have a distinguished reputation.” On appeal, the petitioner argues:

Regarding the company reputation in the field of Computer Science in comparison to other entities can be established by proxy, as the company uses the computer science as a foundation to provide services in the online marketing space. The first proxy is based on the company clients. The company could secure international and local clients including [REDACTED], and [REDACTED] (Exhibit E). Securing [REDACTED] clients is evidence that the petitioner has a distinguished reputation. The second proxy is the media mentions about the petitioner and his work in the company as all mentions reflects the computer science technology used to provide a better service for the clients. The third proxy is the fact that the company has three published patents, where the inventors include internationally acclaimed researchers from the [REDACTED] Labs where royalties are shared between the different assignees.

Regarding the petitioner’s first argument, the petitioner submitted two unidentified screenshots with [REDACTED] and [REDACTED] emblems. The screenshots are in a foreign language, and the petitioner failed to submit any certified English language translations of the screenshots pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, a review of the screenshots fails to reflect that [REDACTED] and [REDACTED] are clients of [REDACTED]. 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’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Regarding the petitioner’s second argument, the petitioner failed to identify which media that he refers to on appeal. Nonetheless, assuming that the petitioner is referring to the documentary evidence submitted in support of the previously discussed published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the AAO is not persuaded that websites that simply mention [REDACTED] demonstrates that it has a distinguished reputation. In fact, none of the websites indicate that [REDACTED] has distinguished itself from other or similar online media companies. Regarding the petitioner’s third argument, while the pending patents have already been addressed in the AAO’s discussion of original contributions criterion, the patent applications merely reflect the creation of original work but does not reflect that [REDACTED] has a distinguished reputation. The AAO also notes that the petitioner submitted brochures and promotional material from [REDACTED]. However, the petitioner failed to submit any independent, objective evidence establishing that [REDACTED] has a distinguished reputation. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

The director also found that the petitioner failed to establish eligibility for this criterion based on his role as an assistant to the [REDACTED].

Although the petitioner failed to address this issue on appeal, the AAO considered his role under the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The AAO will not presume that evidence relating to or even meeting the judging 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.

In addition, the director found that the petitioner's role as a marketing director for █████ failed to establish eligibility for this criterion. Again, the petitioner failed to address this issue on appeal. However, a review of the record of proceeding reflects that the only evidence submitted by the petitioner regarding his role at █████ is the petitioner's self-serving curriculum vitae and the recommendation letter from █████ who stated that the petitioner "was hired by █████ as a Director of Online Marketing" and "█████ is one of the world's most distinguished providers of Live online Broadcasts for more than 250 channels from more than 90 countries." The brief statement by █████ is insufficient to establish that the petitioner's role was leading or critical to █████. Besides indicating the petitioner's job title, █████ fail to indicate any of the petitioner's job duties, so as to establish that his role was leading or critical. Moreover, the petitioner failed to submit any other documentary evidence comparing his roles to other positions within █████, so as to demonstrate that he performed in a leading or critical role. It cannot be determined from the petitioner's job title alone that his role is leading or critical. Furthermore, while █████ indicated that █████ is a distinguished provider, he failed to demonstrate the significance of the statistics to other online providers, so as to reflect that █████ has a distinguished reputation.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a *distinguished reputation* [emphasis added]." In this case, although the petitioner demonstrated that he performs in a leading or critical role for █████ the petitioner failed to establish that it has a distinguished reputation. Moreover, the petitioner failed to establish that he performed in a leading or critical role for █████, and that it has a distinguished reputation.

Accordingly, the petitioner failed to establish that 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 met the plain language of one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in

the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the AAO's 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 participated on a panel of judges at the [REDACTED]

[REDACTED] In addition, the petitioner has demonstrated his original research in the multimedia and data mining areas. Further, the petitioner has shown that he is the president of his own company, [REDACTED]. However, the personal 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 AAO found that the petitioner did not meet the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner failed to demonstrate that the selection of his biography in [REDACTED] qualifies him as a member of associations requiring outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Moreover, the petitioner submitted an email from [REDACTED], who stated that "there were 18,021 new submissions for the latest Who's Who in America" and "[o]f those, 8,660 were selected for the book." Clearly, the high acceptance rate does not demonstrate a level of expertise in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

While the AAO found that the petitioner failed to meet the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the AAO notes that the majority of the documentary evidence submitted by the petitioner does not even mention the petitioner, and the few documents that do mention the petitioner only quote him and are not about him relating to his work. In fact, the petitioner failed to submit a single article reflecting published material about the petitioner relating to his work in professional or major trade publications or other

major media. The lack of any published material about the petitioner fails to demonstrate sustained national or international acclaim for this highly restrictive classification.

Although the AAO determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. The petitioner demonstrated his eligibility based on his participation on a panel of judges for the [REDACTED]

[REDACTED], [REDACTED]. The petitioner also submitted documentary evidence reflecting that he is one of the assistants to the [REDACTED]

[REDACTED]. The AAO notes, however, that the petitioner failed to provide any documentary evidence specifying the number of manuscripts reviewed or other evidence that he participated as a judge of the work of others for the journal. The AAO further notes that the petitioner submitted an email from [REDACTED] inviting the petitioner to be an editorial member for [REDACTED]

[REDACTED] demonstrating that he actually participated as a judge or editorial board member for any of the journals. A request or invitation to be a join member does not equate to actually participating as a judge of the work of others.

Nonetheless, the AAO notes that peer review is a routine element of the process by which articles are selected for publication in 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 computer scientists who publish themselves in journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference, 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).

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), the petitioner based his claim 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 fail to reflect any original contributions of major significance made by the petitioner.

As stated above, they do not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That report also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a scientific researcher of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal." Further, the OOH states specifically that computer scientists "conduct research on a wide array of topics." *See www.bls.gov/oco/ocos304.pdf*. This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from others in that researcher's field.

Although the AAO found that the petitioner failed to meet the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the AAO notes that the petitioner demonstrated that he performed in a leading or critical role for his own company, [REDACTED] without establishing that it has distinguished reputation. Evidence of the petitioner's roles with organizations that have a distinguished reputation is far more persuasive that the petitioner has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2).

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). 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).

In this matter, the evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as a computer scientist. The regulation at 8 C.F.R. § 204.5(h)(3) requires "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that he is active in the computer scientist field, the documentary evidence 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 at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that 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.