

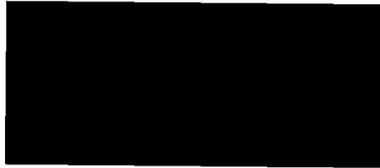


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

B2



DATE: **SEP 29 2011**

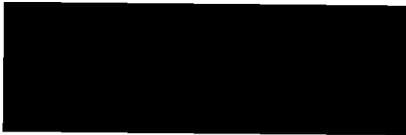
Office: TEXAS SERVICE CENTER

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:



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, 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 in business. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and 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 the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective 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 argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that he submitted comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the AAO will uphold the director's decision.

## 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 an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting 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 (9<sup>th</sup> 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.* at 1121-22.

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

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

*Id.* at 1119-20.

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 September 21, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an International Legal Consultant. The petitioner received his Doctor of Juridical Science (S.J.D.) degree in International Trade Studies from the Golden Gate University

---

<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).

School of Law in San Francisco in December 2005. The petitioner submitted an August 5, 2009 letter stating:

Since April 2008, as a Senior International Consultant, I am directly working with [REDACTED]

My responsibilities include advising the Government of Iraq on issues related to [REDACTED] compliance and accession, international trade, globalization and trade related aspects of intellectual property rights, and providing technical assistance on capacity and institution building.

Prior to that, I joined the USAID project as an International Consultant (Advisor) on [REDACTED] Growth and Employment Generation [REDACTED] from March 2006 to March 2008. I provided advice and technical assistance to the Government of Iraq in the field of WTO and Intellectual Property Rights.

The petitioner has submitted documentation pertaining to the following categories of evidence 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 petitioner asserts that he was awarded a Research Assistantship by the S.J.D. International [REDACTED] a [REDACTED] and a [REDACTED]

The record, however, does not include documentary evidence of petitioner's Research Assistantship award and scholarships to support his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence showing that the preceding Research Assistantship and scholarships equate to nationally or internationally recognized prizes or awards for excellence in the petitioner's field.

The petitioner submitted a June 25, 1990 letter informing him that [REDACTED] awarded him a scholarship for the academic year 1990-91. Academic study is not a field of

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

endeavor, but training for a future field of endeavor. As such, academic scholarships do not constitute prizes or awards for excellence in the petitioner's field of endeavor. Moreover, competition for university scholarships is limited to other students. Experienced professionals in the field who have already completed their education do not seek such scholarships. In this instance, there is no documentary evidence demonstrating that the petitioner's scholarship was recognized beyond the presenting university and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a "Certificate of Appreciation" presented to him "for the excellent program [redacted]". This certificate reflects recognition by his colleagues on the [redacted] project team. There is no supporting documentary evidence showing that this award from the petitioner's project team equates to a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a September 8, 2008 letter from [redacted]

You, [the petitioner], has been honored with the 'A' grades [redacted] for your achievement in International Legal Studies in Ph.D. level from [redacted] United States of America in 2005.

We congratulate you for the achievement of 'A' grade [redacted]. We wish you and hope that you would work for the sake of motherland and use your knowledge and skill for country's well being.

The petitioner also submitted a February 24, 2001 article in *The Rising Nepal* stating:

Of the total 157 persons receiving the [redacted] medal this year, 74 persons received the [redacted] first class medal . . . .

The [redacted] first class medal is awarded to persons receiving Ph.D. degree from the local and foreign universities.

The petitioner's evidence also included a [redacted] stating:

[redacted] conferred various persons with the [redacted] medals, at a special function organised at [redacted] to mark the 31st Education Day, on Friday.

According to State run [redacted], a total of 168 persons were conferred with the medals including eighty persons with the [redacted] 'A' Class for achieving Doctorate in various subjects from various universities at home and abroad . . . .

A total of 3,641 persons have been conferred with the medals so far including 1,632 in class A . . . .

Both of the preceding articles fail to discuss the ceremony in which the petitioner's September 2008 award was conferred. Moreover, the documentation submitted by the petitioner indicates that his [REDACTED] Award was presented to graduates who earned their "Doctorate in various subjects from various universities at home and abroad." Thus, the petitioner's award is based solely on academic achievement. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r. 1998). As such, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification. Further, the petitioner did not submit evidence of the national or international *recognition* of his particular 2008 [REDACTED] Award, such as national or widespread local coverage of his award in professional or general media in 2008. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's 2008 [REDACTED] Award for academic achievement was recognized beyond the context of the event where it was presented and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field of international legal consulting.

Moreover, the AAO notes that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires qualifying "prizes or awards" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapshotnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that his 2008 [REDACTED] Award meets the elements of 8 C.F.R. § 204.5(h)(3)(i), which he has not, a single qualifying award does not meet the plain language requirements of this regulatory criterion.

In light of the above, the petitioner has not established 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 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.

The petitioner asserts that he is a member of the International Law Association (ILA) and the International Bar Association (IBA). The record, however, does not include documentary evidence from the ILA or the IBA to support the petitioner's assertions. As previously discussed, 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. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner submitted a June 27, 2007 letter from [REDACTED] President of the Nepal Bar Association (NBA), stating that the petitioner has been "an active member of the Nepal Bar Association since 1982." Regarding the NBA, the ILA, and IBA, there is no documentary evidence (such as bylaws, rules of admission, or official membership criteria) showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The director discussed the lack of evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted letters of support from his legal colleagues in Nepal and individuals involved with his USAID projects in Iraq. The letters of support discuss the petitioner's educational qualifications, expertise in International Trade Law, work experience, USAID projects, delivery of training programs, and publications, but many of the letters fail to provide specific examples of "original" work done by the petitioner that equates to contributions of major significance in the field. Assuming the petitioner's legal skills and work experience 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. at 221. It is not enough to be skillful and knowledgeable and to have others attest to those

talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. Many of the references praise the petitioner's skills, knowledge, and legal experience, but they do not provide specific examples of how the petitioner's work has already impacted the field at large or otherwise constitutes original contributions of major significance. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010).<sup>3</sup>

Chief of Party, Tijara project, USAID Provincial Economic Growth Program, Iraq, states:

[The petitioner] is one of our Senior Advisors on a U.S. government financed foreign aid project in Iraq. His role on this project is to advise Government of Iraq Ministries and Judges on Intellectual Property and Trademark law and how to interpret and adapt this in Iraq in order to become compatible with international standards.

In this capacity, he has distinguished himself as a major contributor in the effort of helping Iraq prepare to join the World Trade Organization (WTO). This is a core component of our Private Sector Development Program, known as USAID/Tijara.

\* \* \*

He has aided the Government of Iraq to formalize responses sought by a WTO counterparty working committee, based in Geneva, Switzerland to questions concerning Iraq's understanding and enforcement capabilities of Intellectual and Property Rights Laws --- copyrights, trademarks, patents, etc.

This has required in turn close coordination with Iraqi officials, and direct involvement of [the petitioner] to draft regulations, deliver specialized training courses to judges, government officials and also to private sector operators to raise public awareness of WTO membership benefits. He has both organized and authored numerous scholarly source materials, brochures and discussion documents on intellectual property rights in connection with the WTO accession process.

While [redacted] comments that the petitioner is "a major contributor in the effort of helping Iraq prepare to join the World Trade Organization," he does not provide specific examples of how the petitioner's original work has already significantly impacted the field at large. Not only does the letter from [redacted] fail to identify any original contributions made by the petitioner, the letter also fails to indicate if the petitioner's work has been of major significance to the field as a whole and not limited to his immediate USAID projects. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to a particular economic growth project.

---

<sup>3</sup> In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

██████████ Senior Economic Advisor and Fiscal Management Team Leader, USAID Tatweer – National Capacity Development in Iraq, states:

For the past two and half years in Iraq, [the petitioner] drafted several laws on WTO/TRIPS [Trade Related Aspects of Intellectual Property Rights] compliant Iraqi Intellectual Property Rights, prepared WTO documentation, delivered many and varied specialized training courses on WTO and intellectual property rights, and conducted research work in the area of intellectual property, WTO accession, and investment.

██████████ discusses the petitioner's general activities for the USAID Tijara project, but he does not provide specific examples of how the petitioner's original work has already impacted Iraqi trade, investment, or intellectual property rights so as to establish original contributions of major significance to the field.

██████████ Director, International Trade/WTO Accession Component, Tijara project, USAID Provincial Economic Growth Program, Iraq, states in his initial letter: “[The petitioner's] assistance to the Government of Iraq has resulted in the drafting of a soon to be enacted intellectual property rights law that will be one of the most streamlined and innovative IPR laws in the world.” The petitioner's evidence includes a “draft” copy of Iraq's “Intellectual Property Rights Law” that he prepared for USAID. In his subsequent letter submitted in response to the director's request for evidence (RFE), ██████████ repeats his claim that “once this law is enacted, Iraq will have one of the most comprehensive and streamlined intellectual property laws in the world.” ██████████'s assertions that the petitioner's work “will” someday result in one of the most comprehensive, streamlined, and innovative intellectual property laws in the world is not adequate to establish that his work is already recognized as a major contribution in the field. 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 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. In this instance, there is no evidence showing the law drafted by the petitioner has been successful in affording intellectual property protections in Iraq or that it otherwise constitutes an original contribution of major significance in the field.

In response to the director's RFE, ██████████ Director, International Trade/WTO Accession Component, Tijara project, USAID Provincial Economic Growth Program, Iraq, provides additional comments on the draft Intellectual Property Rights Law stating:

I have reviewed the Iraqi Intellectual Property Rights draft Law prepared by [the petitioner]. This draft law has been submitted to the WTO by the Government of Iraq, and it is currently undergoing the necessary procedural steps for adoption by the Iraqi Council of Representatives. This draft law is unique in its nature and will facilitate international trade by protecting intellectual property rights in Iraq. It is an important contribution in the field of international trade and intellectual property rights, and it is a truly significant accomplishment in this field.

There is no evidence showing adoption of the petitioner's draft law by the Iraqi Council of Representatives or evidence demonstrating that it has been successful in affording intellectual property protections to companies doing business in Iraq. Further, [REDACTED] does not specify what is unique or original about the petitioner's draft Intellectual Property Rights Law or how its content differs from existing laws covering intellectual property rights in other more developed nations.

[REDACTED] Senior Advisor, Business Development Services, Tijara project, USAID Provincial Economic Growth Program, Iraq, also comments on the draft law in her response to the RFE stating:

The Iraqi Intellectual Property Rights (IPR) draft Law, prepared by [the petitioner], is an important contribution in the field of international trade. . . . This draft law will promote and protect intellectual property rights in Iraq and will contribute to attracting foreign investment in Iraq. The draft law has been submitted to the World Trade Organization (WTO) by the Government of Iraq. Also, Iraq has already met the critical requirements of WTO accession. What's more about one and half years ago, this draft law proved so valuable that USAID forwarded it to the U.S. Ambassador of Iraq. The draft law represents a consequential effect upon international trade, and it can be considered a truly significant accomplishment as well as a major regulatory contribution in the IPR field.

[REDACTED] comments that draft law prepared by the petitioner "represents a consequential effect upon international trade," but she does not provide specific examples of measurable economic benefits that have already accrued which demonstrate the law to be successful and effective. There is no documentary evidence showing that the draft of Iraq's Intellectual Property Rights Law has been enacted, successfully enforced, or that it has otherwise significantly impacted the country's international trade. As previously discussed, 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 (Reg'l Commr. 1971).

Aside from his preparation of a draft Iraqi International Property Rights Law, the petitioner asserts that his S.J.D. thesis entitled "Nepal's Accession to WTO and Nepalese Legislation Required to Give Effect to WTO Covered Agreement" and four formal reports that he authored meet the elements of this regulatory criterion. The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Thus, there is no presumption that every published article is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the

alien had not demonstrated contributions of major significance. 596 F.3d at 1122. The petitioner's references do not provide specific examples of how the results from his published work are being widely applied by others in the field or that they otherwise equate to original contributions of major significance in the field.

The petitioner submitted documentation indicating that his report entitled "Conformity of Nepal's Domestic Legislation with WTO Agreements" was cited to twice and that his article entitled "Nepal's Accession to the World Trade Organization" was cited to only once. The petitioner has not established that this minimal level of citation of his work is indicative of original contributions of "major significance" in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). While the petitioner's scholarly articles and reports are no doubt of value, it can be argued that any doctoral thesis or scholarly research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every legal scholar who presents original findings that add to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole. In this case, there is no documentary evidence showing that the petitioner's S.J.D. thesis, published work, and formal reports are frequently cited by independent scholars, that his particular original findings have been successfully implemented by many institutions or professionals throughout his field, or that his work otherwise constitutes original contributions of major significance in the field.

In discussing the evidence submitted for this regulatory criterion, the director's decision stated:

Regarding the fifth criterion, the record establishes [the petitioner] prepared the Iraqi Intellectual Property Rights draft Law. This has been submitted to the WTO by the government of Iraq.

\* \* \*

However, given that 1) the Iraqi Council of Representatives has yet to officially accept [the petitioner's] draft, 2) Iraq has yet to be formally admitted to the WTO, and 3) [the petitioner's] draft as . . . written . . . has not as of the filing date of the petition taken effect, this proposed piece of legislation cannot at this time be considered as a major contribution in the field of international property rights and/or trade law.

Additionally, the record provides no clear documentary evidence to support [the petitioner's] claim that either [his] doctoral dissertation or any of [the petitioner's] formally prepared reports constitute such a major contribution to [his] field that it greatly influenced many similarly employed professionals in your field.

On appeal, counsel asserts that the draft law "was accepted by the government of Iraq," "has received a lot of attention," has influenced and impacted the government of Iraq, and shows Iraq's commitment to the international community and foreign investors. Counsel also asserts that the U.S. Iraq Business Dialogue has "issued a statement to enact this draft law as soon as

possible” and points to exhibit 46 of the appellate submission. Exhibit 46 includes a December 3, 2008 e-mail from an unknown sender to the petitioner and the petitioner’s December 3, 2008 response to the unidentified sender. The e-mail does not constitute a statement of endorsement issued by the U.S. Iraq Business Dialogue as implied by counsel. Without documentary evidence to support the preceding claims, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner’s appellate submission also includes an excerpt from a U.S. Department of State, Bureau of Economic, Energy and Business Affairs “2009 Investment Climate Statement” stating:

Iraq currently does not have adequate statutory protection for intellectual property rights (IPR). The GOI [Government of Iraq] is in the process of developing a new IPR law to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The draft law covers patent, trademark and copyright, and it is hoped that strong implementing regulations will help consolidate IPR protection functions, which are currently spread across several ministries, into a “one-stop” IPR office. . . . Although the new draft will offer adequate statutory IPR protections, it has been stalled in the constitutional review process since mid-2007. The GOI’s ability to enforce IPR protections remains weak.

The preceding report states that the draft law “will offer *adequate* statutory IPR protections” (emphasis added), but that it has not yet been enacted due to being stalled in the constitutional review process and that IPR protection in Iraq “remains weak.” Accordingly, the petitioner has failed to demonstrate that the draft law he prepared has had any measurable impact in protecting intellectual property rights. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that the petitioner must demonstrate that his work had already significantly impacted the field at the time of filing. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. at 175-76. Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his work will subsequently prove to be of major significance in the field. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4<sup>th</sup> Cir. 2008). To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that his work may someday have a significant impact on the field.

Furthermore, the AAO notes that section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “*contributions* of major significance” in the plural. [Emphasis added.] Therefore, even if the petitioner were to submit supporting documentary evidence demonstrating that his preparation of a “draft” Iraqi “Intellectual Property Rights Law” qualified as an original contribution of major significance in the field as of the petition’s filing date, which he has not, the plain language of this regulatory criterion requires evidence of more than one original contribution

of major significance in the field. Without documentary evidence of more than one qualifying contribution, the petitioner cannot establish that he meets the plain language requirements of this criterion.

On appeal, counsel argues that the director “failed to adequately consider the recommendation and evaluation letters from the experts in the field of International Intellectual Property Rights and International Trade involving WTO.” The AAO notes that all of the reference letters submitted by the petitioner are from individuals who have directly interacted with him or who are affiliated with his USAID projects. While such letters are important in providing details about the petitioner’s work on various projects, they cannot by themselves establish that his work is recognized beyond his professional contacts. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions 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 from experts 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) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the experts' 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 that one would expect of an international legal consultant who has made original contributions of major significance. Without supporting evidence showing that the petitioner’s work equates to original contributions of major significance in his field, the AAO cannot conclude that he meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner has documented his authorship of scholarly articles that were published as of the petition’s filing date and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established 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.*

We withdraw the director’s finding that the petitioner meets this regulatory criterion. At issue is whether the petitioner played a leading or critical role for an organization or establishment as a whole and the reputation of the organization or establishment. As previously discussed, the petitioner submitted letters of support discussing his work for USAID in Iraq.

states:

During 2006-2009, [the petitioner] was employed by The Services Group (which is now AECOM International) to serve as a special intellectual property rights consultant for the USAID/Iraq project, Izdihar, and then for the follow-on USAID/Iraq project Tijara. Both

of these projects have been the key initiative by the U.S. Government to assist Iraq in joining the World Trade Organization.

states:

I have observed and evaluated [the petitioner's] work and role. His work is directly related to USAID, and he provided USAID technical assistance to the Government of Iraq. Both the Government of Iraq and USAID hold a distinguished reputation. [The petitioner], as a consultant, performed a critical and leading role for the USAID program and for the Government of Iraq by providing technical assistance, drafting TRIPS compliant intellectual property rights laws, preparing WTO documentation, providing specialized trainings, and advising on WTO accession issues related to intellectual property.

asserts that the Government of Iraq and USAID have a distinguished reputation, but the record does not include any documentary evidence to support his claim. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

states:

[The petitioner] was hired by AECOM to work as a consultant for the USAID program in Iraq and to work in conjunction with the Government of Iraq. The USAID Iraq program is funded in total by the US Government. Both the Government of Iraq and USAID maintain a distinguished reputation. While [the petitioner] worked for the two USAID programs and for the Government of Iraq, he performed a leading role for both governments by providing legal advice and technical assistance. Additionally, he played a critical role to provide USAID technical assistance to the Government of Iraq by drafting TRIPS compliant intellectual property rights law, preparing WTO documentation, providing specialized trainings, and advising on WTO accession issues related to intellectual property.

In response to the RFE, counsel argues that the petitioner "has performed in a leading or critical role for USAID and the Government of Iraq (GOI)" and that both "unequivocally" have a distinguished reputation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Regarding the Government of Iraq's reputation, the AAO cannot ignore that the petitioner describes that country in his August 5, 2009 letter as "plagued with violence, terrorism, lawlessness, and lack of proper legal infrastructure." Further, the U.S. Department of State, Bureau of Economic, Energy and Business Affairs "2009 Investment Climate Statement" notes that the "GOI's ability to enforce IPR protections remains weak." In this case, there is no documentary evidence showing that the Government of Iraq has a

distinguished reputation. Moreover, the documentation submitted by the petitioner is not sufficient to demonstrate that the petitioner's role as a consultant or advisor on the USAID Izdihar and Tijara projects is leading or critical to the Iraqi Government as a whole. The record lacks evidence that the petitioner contributed significantly to the activities of the government beyond the normal expectations of an economic growth program advisor.

While the petitioner has submitted letters of support indicating that he performed admirably on projects for the International Trade and WTO Component of USAID, there is no documentary evidence showing that his role as a Senior Advisor on WTO and Intellectual Property is leading or critical to USAID as a whole. The petitioner's evidence does not demonstrate how his temporary contractual appointment differentiates him from the numerous other consultants and advisors contracted to work for USAID, let alone the agency's permanent employees and executive management. The documentation submitted by the petitioner does not establish that he was responsible for USAID's success or standing to a degree consistent with the meaning of "leading or critical role." Further, the record does not include documentary evidence showing that USAID has a distinguished reputation. As previously discussed, 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. at 165.

In light of the above, the petitioner has not established that he meets this criterion.

#### *Summary*

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

#### ***B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)***

On appeal, counsel argues that the director erred in failing to consider the recommendation letters, the petitioner's S.J.D. degree, his Master's degree in International and Comparative Law, the three cites to his published work, his presentations at seminars and symposia, his faculty position at the [REDACTED], his selection as a Visiting Scholar at [REDACTED] and his Certificate of Traineeship from the International Committee of the Red Cross as comparable evidence of his extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the categories of evidence specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, the deficiencies in the preceding documentation have already been addressed under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (v), and (viii). Further, there is no

evidence showing that the documentation the petitioner requests reevaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. Regarding the recommendation letters submitted by the petitioner, the AAO notes that they are all from the petitioner's professional associates in Nepal or those who are affiliated with his USAID projects. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues. Moreover, reference letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. 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). The commentary for the proposed regulations implementing the statute 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from references selected by the petitioner.

With regard to the petitioner's S.J.D. degree and Master's degree in International and Comparative Law, this office has held, in a precedent decision involving a lesser visa classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. As such, academic performance is certainly not comparable evidence of sustained national or international acclaim at the very top of the field necessary to demonstrate an alien's eligibility for this more exclusive classification.

In regard to the three cites to the petitioner's published work, this documentation has already been addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3). There is no evidence showing that this minimal level of citation of his work is indicative of original contributions of "major significance" in the field or sustained national or international acclaim in international law.

Regarding the petitioner's presentations at seminars and symposia, the reputation of the petitioner's speaking venues is undocumented. While presentation of the petitioner's work demonstrates that it was shared with others and may be acknowledged as original work based on its selection for presentation, the AAO is not persuaded that his presentations significantly impacted the field or that his level of recognition extended beyond the engagements in which his work was presented. The petitioner failed to establish, for example, that his presentations were of major significance so as to establish their impact or influence beyond the audience at the conferences. 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. In this case, there is no evidence showing that the petitioner's presentations have been frequently cited by independent legal scholars in their work or that his presentations have otherwise significantly impacted his field. The petitioner has not established that his

presentations were indicative of sustained national or international acclaim at the very top of the field.

With regard to the petitioner's faculty position at the [REDACTED] selection as a [REDACTED] of Traineeship from the International Committee of the Red Cross, there is no documentary evidence showing that these appointments and traineeship constitute achievements and recognition consistent with sustained national or international acclaim at the very top of his field. A final merits determination that considers all of the evidence follows.

### ***C. Final Merits Determination***

The AAO will 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), and (viii).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. The evidence discussed above is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. The AAO notes that competition for the petitioner's Research Assistantship, scholarships, and Nepal Bidhya Bhusan Award was based on student achievement and therefore excluded experienced legal professionals and faculty who already completed their educational training. Such awards do not establish that the petitioner "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). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899.<sup>4</sup> Likewise, it does not follow that receiving awards based on academic achievements should necessarily qualify an international legal consultant

---

<sup>4</sup> The AAO notes 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.

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.

for approval of an extraordinary ability employment-based immigrant visa petition. 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.”

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the NBA, the ILA, and IBA require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

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

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi), the AAO acknowledges that the petitioner has authored scholarly articles in a university setting. Further, the AAO notes that the petitioner is listed among the [REDACTED] and that he was invited to perform research as a [REDACTED]

The Department of Labor’s Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on September 26, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://www.bls.gov/oco/pdf/ocos066.pdf>. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor’s research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research does not set a legal scholar apart from other faculty in that scholar’s field.

Moreover, the petitioner’s citation history is a relevant consideration as to whether the evidence is indicative of the petitioner’s recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. As previously discussed, the documentation submitted by the petitioner indicates that his body of work has been only minimally cited as of the petition’s filing date. The number of independent cites to the petitioner’s work at the time of filing is 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.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the record does not establish that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The evidence submitted by the petitioner does not establish that his work as senior advisor and consultant on WTO and intellectual property projects for USAID was leading or critical to his affiliated institutions, or otherwise commensurate with sustained national or international acclaim at the very top of his field.

In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as an international legal consultant, or being among that small percentage at the very top of the field of endeavor. The conclusion we reach 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 the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

### III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, 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.