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

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: APR 2 4 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Furthermore, counsel claimed that the director erred in failing "to consider material dated after the filing date" and "[t]he [director] cited no legal basis for this." However, eligibility must be established at the time of filing on March 28, 2010. 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. To hold otherwise would allow an alien to secure a priority date in the hopes that subsequent achievements will demonstrate eligibility. Therefore, the AAO is not persuaded by counsel's claims on appeal, and the documentary evidence reflecting events that occurred after the filing of the petitioner will not be considered.

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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.* 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)).

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

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. Specifically, the director stated that "[t]he submitted material is not primarily about you and it does not discuss the merits of your work, your standing in the field, or any significant impact that your work had on the field." On appeal, counsel claims:

> [N]othing in the regulation requires that the material submitted, be "primarily about you," "discusses the merits of your work," or discusses "your standing in the field or any significant impact your work has had." It is crystal clear here that [the director] is "unilaterally impos(ing) novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5[.]"

Based on the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) that 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," the AAO is not persuaded by counsel's argument that the director imposed an inappropriate restriction on his reference to "primarily about you." As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work in the field for which classification is sought, the director's general statement that the material should be "primarily about you" is not beyond the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the submission of evidence that simply mentions the petitioner's name, quotes the petitioner, or is not otherwise about the petitioner fails to equate to published material about the alien relating to his work in the field. Furthermore, the AAO does not find that the director's use of "primarily" means that the material must be solely or exclusively about the alien relating to his work. For example, an article that discusses multiple individuals regarding their work, in which one of those individuals is the petitioner, would generally meet the elements of this

[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

criterion. An article that is not about the petitioner does not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In the case here, which will be discussed in depth below, the petitioner submitted material that merely listed the petitioner as one of several scientists who worked on a research project but was not material about the petitioner relating to his work. It is insufficient to establish eligibility for this criterion based on any material that simply lists, mentions, or indicates the petitioner's name, such as the posting of a player's score from a golf tournament in a newspaper, without material that is about the petitioner relating to his work. The AAO is not persuaded that anytime an alien's name is mentioned in the media the alien would automatically qualify for the regulation at 8 C.F.R. § 204.5(h)(3)(iii). However, the AAO concurs with counsel that the director's reference to "the merits of [the petitioner's] work, [the petitioner's] standing in the field, or any significant impact that [petitioner's] work had on the field" is beyond the plain language of the regulation. *Compare* 8 C.F.R. § 204.5(h)(3)(v), which requires the petitioner's original contributions to be "of major significance in the field." While the director may have used this language as examples, the plain language of this regulatory criterion requires only published material about the petitioner relating to his work. Ultimately, the AAO concurs with the director that the documentary evidence submitted by the petitioner does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted an article entitled, "Scientists Guide Immune Cells With Light and Microparticles," dated November 16, 2009, by an unidentified author, in *ScienceDaily*. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "the title, date, and author of the material." Although the article indicates that the source is from Yale University, the petitioner failed to indicate the author of the material. Regardless, the article is not about the petitioner relating to his work. Rather, the article is about "a new approach to studying how immune cells chase down bacteria in our bodies." Although the petitioner is listed at the end of the article as one of 11 scientists, the fact remains that the article is not about the petitioner. An article that is not about the petitioner does not meet this regulatory criterion. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. *See also, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *7 (upholding a finding that articles about a show are not about the actor).

Likewise, the petitioner submitted an article entitled, "Scientists Guide Immune Cells With Light," dated November 17, 2009, by an unidentified author, in *medGadget*. Again, the petitioner failed to include the author of the article. Nonetheless, the article cites some of the article from *ScienceDaily*. The article is not about the petitioner relating to his work in the field. In fact, the article never even mentions the petitioner. Clearly, the article does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The director also indicated that the petitioner submitted two articles that were published after the filing of the petition – [redacted] and [redacted] Eligibility must be established at the time of filing on March 28, 2010. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner

becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Notwithstanding, neither article mentions the petitioner and is clearly not published material about the petitioner relating to his work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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." It is the petitioner's burden to establish that he meets every element of this criterion. In this case, the petitioner's documentary evidence fails to reflect 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 original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner established eligibility for this criterion. Specifically, the director stated:

> You have submitted evidence that your work is considered a breakthrough by experts in your field. You also submitted evidence that you developed a new compound that was patented. The patent was sold to a biomedical company in China and is being produced. The evidence demonstrates the major significance of your original contributions.

Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion. 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." Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Regarding the petitioner's patent, the petitioner submitted documentary evidence reflecting that he received a patent [redacted] from the State Intellectual Property Office of China on October 26, 2005, for "[t]he drug combination containing [redacted] for the treatment and prevention of fatty liver disease." The petitioner also submitted a reference letter from [redacted] who stated:

> The results of the project and the related patent were sold to Biochemical [Engineering] Co. Ltd [CMBEC] for the [sic] further commercial purposes. [The petitioner's] discovery of the drug combination containing for treatment of lead toxicosis and fat[ty] liver disease has wide ranging therapeutic implications for treatment of these two diseases. His achievements on *will* undoubtedly help patients in the United States and internationally [emphasis added].

The petitioner also submitted a reference letter from who stated:

> In 2007, CMBEC, together with Fudan University, tried to commercialize [the petitioner's] patent. . . . [I]n 2001, [the petitioner] observed that has a significant effect on lead excretion, but not zinc and copper excretion in the lead-poisoned animal model, indicating that *may* also be used for the treatment of lead toxicity [emphasis added]. In 2003, a *Nature* paper done by another group demonstrated that is an essential vitamin of vitamin B group and a new co-factor for reduction-oxidation (redox) reaction. Based on these evidences, CMBEC concluded that has a significant *potential* as a vitamin for diet supplements and pharmaceutical drugs, which *will* be greatly beneficial to human health [emphasis added].
>
> Another reason to choose [the petitioner's] patent is that his patent *may* lay a solid foundation for the manufacture of [emphasis added]. . . . With the help of [the petitioner's] patent, CMBEC has made a major breakthrough in project. We have successfully finished a pilot-scale production at a production scale of 800 liters. Currently, we are in the stage of a trial manufacture at output of 10,000 liters. Meanwhile, we are *planning* to file the application of as State Category One New Drug (i.e. drugs that have not been launched in China or overseas markets) for treating fatty liver and lead toxicity in the State Food and Drug Administration of China [emphasis added]. Moreover, we *will* file the application of as a novel and natural food additive in China [emphasis added].

Moreover, stated:

> There is currently no medical treatment that reverses fatty liver disease and causes fat within the liver to resolve. However, which is successfully developed and patented by [the petitioner], *may* be new hope for patients with fatty liver disease [emphasis added]. Using alcohol-fed mouse as a model for fat liver disease, [the petitioner] found accumulation of lipid droplets in the liver of ethanol-fed animals. However, lipid droplets were rare in livers of ethanol-fed animals treated with suggesting a protective effect of against alcoholic fatty liver diseases in mice. Therefore, *may* serve as a promising agent for preventing or treating human fatty liver disease [emphasis added].

The AAO 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. 215, 221 n. 7, (Comm'r 1998). 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 demonstrate that the petitioner made a contribution of major significance in the field through his development of this idea. In the case here, the petitioner submitted sufficient documentary evidence demonstrating his original research regarding [redacted] However, the petitioner failed to establish that his research has been of major significance in the field. Instead, as emphasized above, the petitioner's reference letters appear to speculate on the potential impact that his patent and [redacted] may have for patients with fatty liver disease. Moreover, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research regarding [redacted] while original, is still ongoing. Accordingly, while the AAO does not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While CMBEC is trying to manufacture a [redacted] product, [redacted] letter clearly reflects that CMBEC is still in the trial stage. Furthermore, there is no evidence that the petitioner's research has impacted or influenced the field beyond CMBEC, so as to demonstrate that he has made original contributions of major significance in the field as a whole. The fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

In addition, the petitioner submitted documentary evidence from *ISI Web of Knowledge* and *Google Scholar* reflecting that his published articles have been independently cited 50 times. While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field.* In this case, the petitioner's highest cited article has been cited approximately 18 times, and the majority of the petitioner's articles cited less than eight times, including two articles that were cited one time. The AAO is not persuaded that such citations are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with

influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field. The AAO is not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as a whole.

Finally, a review of the record of proceeding reflects that the petitioner submitted several recommendation letters. In this case, while the recommendation letters praise the petitioner for his work, they fail to indicate that his contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For example, while stated that the petitioner made "breakthrough discoveries" that "have vitally important implications," she failed to provide specific information to establish that they have been of major significance in the field. Instead, indicated that the petitioner's work has been published in scientific journals. Similarly, for example, the letters from emphasized the publication of the petitioner's work without demonstrating the impact or influence of his work on the field. Furthermore, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner's scholarly articles will not be considered under this criterion, they will be addressed under the next criterion.

The petitioner's recommendation letters also discussed the petitioner's research regarding a "short hairpin RNA-based method." For instance, stated:

> This new method *will* generate inflammation animal models to study neutrophils in a short time period (about 2 months) and provides an alternative to the time-consuming gene knock-out animal models (more than 2 years), which had been the only way for loss of function of primary neutrophils to be studied [emphasis added]. These results are a significant contribution to this field. Indeed, we have already received some emails from other labs to request the reagents [the petitioner] prepared after he presented this research in 2009 The related work has been submitted into Journal of Biological Chemistry and the manuscript is currently under the revision. His work has already and will continuously contribute to our battle against chronic inflammation.

Although demonstrated the petitioner's original contribution regarding this method, there is insufficient evidence to show that it has been of major significance in the field. In fact, as indicated by he petitioner's research has yet to be published rather than it is in the process of being

published in the *Journal of Biological Chemistry*. Further, failed to indicate if any inflammation animal models have been generated as a result of the petitioner's work, so as to reflect that the petitioner's work is currently being applied in the field. Instead, speculated that the method "will" generate inflammation animal models. 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. While the petitioner's method has received some interest in the form of emails, the AAO is not persuaded that receiving a few email requests demonstrates that it has been of major significance in the field.

While those familiar with the petitioner's work generally describe it as "important," "vital," and "significant," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The 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. As such, the AAO withdraws the decision of the director for this criterion.

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

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Based on a review of the record of proceeding, the petitioner submitted sufficient documentary evidence establishing that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Accordingly, the petitioner 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.

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claims eligibility for this criterion based on his role as a postdoctoral associate at the The petitioner submitted the previously discussed letter from who stated that the petitioner "plays a critical role in the leukocyte research in and "he is leading a group of six scientists in search of critical genes in leukocyte." The petitioner submitted no other documentation regarding his role at

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. Although stated that the petitioner's role is critical, offered no further information to establish that the petitioner's leading of six scientists is reflective of a leading or critical role at as a whole. There is no evidence, for example, that distinguishes that petitioner from the other scientists at rather than limited to a research project within the Department of Pharmacology. The petitioner failed to submit any documentary evidence that compared his roles with the other postdoctoral associates within the department, let alone with the roles of the other scientists. In fact, when compared to the role of who is the research supervisor of the petitioner, it appears that the petitioner's role falls far short in demonstrating a leading or critical role for

Moreover, even if the petitioner were to submit supporting documentary evidence showing that his role at meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires a leading or critical role for more than one organization or establishment. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R.

§§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). In the case here, the petitioner claimed eligibility for this criterion based on only one establishment –

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." The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[3] Rather, the proper conclusion is that the

[3] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office

petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).