identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

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

[redacted]

B2

DATE: AUG 2 3 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 August 19, 2011, 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 as a mechanical engineer. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

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

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

I. LAW

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

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

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

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

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 and conduct a final merits determination.

---

[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).

II. ANALYSIS

A. Evidentiary Criteria[2]

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

In the director's decision, she determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

The petitioner claims eligibility for this criterion based on his receipt of the following awards:

1. Cross of the Venezuelan Air Force Third Class on December 10, 1995;

2. Order July 18th on July 18, 2002;

3. Diploma Merit Award on April 12, 1996;

4. Certificate for contributions and participation during defense and national security conferences on April 1, 1999.

Regarding item 1, the petitioner submitted the "Decoration Regulations" reflecting that the Air Force Cross "will go to reward distinguished service to The Air Force." Moreover, a recipient receives "Third Class" based on any of the following:

a. Heroic actions highlighted in all circumstances.

b. By their own initiative, the rescue of a unit in imminent danger.

c. Possess a high institutional ethos, reflected in selflessness, morality and irreproachable conduct and full compliance with the duties of service.

d. Demonstrate through their work special ability to implement professional knowledge and skills of organization and air force administration.

---

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

e. The adequacy of self-denial manifested in the performance of professors in educational institutes of The Air Force.

f. Have earned first place in national or international sports competitions on behalf of The Air Force, in the opinion of the Council of the Order.

g. Have earned first place in courses of professional specialization, according to the council of the Order.

h. Have earned two merit awards, in General Order of the Ministry of Defense.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the prizes or awards be "for excellence *in the field of endeavor* [emphasis added]." The petitioner seeks classification as an alien of extraordinary ability as a mechanical engineer. While the petitioner submitted sufficient documentary evidence reflecting his receipt of the Cross of the Venezuelan Air Force Third Class, he failed to submit documentation establishing that it was based in his field of endeavor as a mechanical engineer. In other words, the petitioner failed to demonstrate that he received the Air Force Cross Third Class as a result of excellence in mechanical engineering.

Regarding item 2, the petitioner submitted a letter from [redacted] Universidad Simon Bolivar (USB), inviting the petitioner to a ceremony where the Order July 18 would be conferred upon the petitioner. However, the petitioner failed to submit any documentary evidence reflecting that he actually received the Order July 18. As such, the petitioner failed to establish his receipt of the Order July 18. Notwithstanding, the petitioner submitted the "Regulations – Rules of General Application" reflecting that the Order July 18 is an award by USB that "rewards their teaching staff, administrators, technicians and workers on merit distinguished years of service." The AAO is not persuaded that an award that acknowledges the length of service at an educational institution equates to a nationally or internationally recognized award for excellence in the field of endeavor. Moreover, the petitioner failed to submit any documentary evidence demonstrating that the award is recognized beyond USB, so as to reflect a nationally or internationally recognized award for excellence.

Regarding item 3, the petitioner submitted a certificate from the Venezuelan Air Force Base, The Command of Air Transport Group No. 5 reflecting that the petitioner received the merit award "in its XX anniversary, as recognition to his excellent services to this unit." Further, the petitioner submitted an invitation letter for an anniversary celebration of the air transport group. Similar to item 1, the petitioner failed to submit any documentary evidence demonstrating that the merit award is in his field of mechanical engineering.

Regarding item 4, the petitioner submitted a certificate from the Venezuelan National Security and Defense Council for the petitioner's "contributions and participation: During Defense and National Security Conferences." The petitioner failed to submit any other documentation regarding this item. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "nationally or

internationally recognized *prizes or awards for excellence in the field of endeavor* [emphasis added]." The petitioner failed to demonstrate that a certificate acknowledging the petitioner's contributions and participation at conferences equates to a nationally or internationally recognized prize or award. Merely attending conferences or participating in the agendas are not indicative of nationally or internationally recognized prizes or awards for excellence consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Furthermore, the petitioner failed to establish that his contributions and participation are in his field of endeavor as a mechanical engineer.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence *in the field of endeavor* [emphasis added]." Simply submitting documentation reflecting receipt of prizes or awards or insufficient to meet all of the elements of this criterion unless the petitioner demonstrates that his nationally or internationally recognized prizes or awards are for excellence in his field of endeavor.

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

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

The director determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentary evidence to establish that he meets the plain language of this regulatory criterion. As such, the AAO withdraws the decision of the director for this criterion.

Accordingly, the petitioner established that he meets this criterion.

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

In the director's decision, she determined that the petitioner failed to establish eligibility for this criterion. In counsel's brief, she did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011,

2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentary evidence to establish that he minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner 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.*

In the director's decision, she determined that the petitioner failed to establish eligibility 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).

The petitioner submitted documentary evidence reflecting that he has published nine articles, and two of his published articles have been cited four times by others. Specifically, the petitioner's articles, "Contribution of Thermal Radiation to the Temperature Profile of Semitransparent," and "Contribution of Thermal Radiation to the Temperature Profile of Ceramic Composite Materials," were cited two times each. 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 AAO is not persuaded that such minimal citations are reflective that the petitioner's work has been of major significance in the field. Moreover, the petitioner failed to submit any documentary evidence reflecting that his other seven articles have ever been cited by others. 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 minimal 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.

The petitioner's evidence includes documentation that the he has presented his findings at various scientific conferences, such as the American Society of Mechanical Engineers Conferences and joint conference between the World Intellectual Property Organization and the Economic Commission for Latin America and the Caribbean, along with numerous other participants. However, many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field.

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

Furthermore, on appeal, counsel refers to four recommendation letters that she claims establishes the petitioner's eligibility for this criterion. 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 instance, Colonel [redacted] United States Air Force, Retired, discussed the petitioner's role as an investigator for the Western Hemisphere Information Exchange Program (WHIEP). While Colonel [redacted] complimented the petitioner for his talents and knowledge, Colonel [redacted] failed to demonstrate that the petitioner's contribution was of major significance to the field as a whole rather than limited to the project. Similarly, the petitioner submitted a letter from [redacted] National Hydraulics Laboratory, who commented on the petitioner's "vast knowledge" and "patience and dedication" while working on the WHIEP but failed to provide detailed, specific information establishing that the petitioner's contributions are of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Moreover, [redacted] USB, stated:

> A review of his technical work and the publications generated from it, shows [the petitioner] as a leading researcher in the area of multiphase pumping, pushing forward the state-of-the art on such important area for the petroleum and energy & power industries. [The petitioner] developed a valuable insight on the flow behavior of gas-liquid two-phase flow mixtures in pumps through the use of a mixed approach of both experimental studies and Computational Fluid Dynamics simulations.
>
> [The petitioner's] work, based on clear objectives and consistent approach, presents an original and important contribution in this field. The completed work and the planned future activities aim at development of a comprehensive understanding and design criteria for turbo machinery operated under two-phase flow.

Although Professor [redacted] briefly indicated an original contribution made by the petitioner, he failed to explain how the petitioner's contribution is considered of major significance in the field. Professor [redacted] failed to indicate the impact or influence of the petitioner's contribution on the field, so as to demonstrate an original contribution of major significance in the field. Simply identifying an original contribution is insufficient to meet this criterion unless specific, detailed information is provided to show that the original contribution is of major significance in the field. Likewise, the petitioner submitted a letter from Dr. [redacted] University of Tulsa, Oklahoma, who also briefly indicated that the petitioner's contribution regarding the flow behavior of gas-liquid two-phase flow mixtures. In fact, Dr. [redacted] letter regarding this issue is almost verbatim to [redacted] Regardless, Dr. [redacted] failed to provide any specific information to reflect that the petitioner's contribution is of major significance in the field.

While those who submitted recommendation letters on the petitioner's behalf generally describe his work as "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Vague, solicited letters from local 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 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in 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.

Moreover, while the recommendation letters praise the petitioner's knowledge and skills, the letters fail to demonstrate how they are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

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.

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 upon a review of the record of proceeding, the petitioner submitted sufficient documentary evidence to establish that he minimally meets the plain language of this regulatory criterion.

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, she determined that the petitioner established eligibility for this criterion. Based upon a review of the record of proceeding, the AAO must withdraw the decision of the director for this criterion.

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]." The burden is on the petitioner to establish that he meets every element of this criterion. Not only must the petitioner demonstrate that he performed in a leading or critical role, but he must also demonstrate that those roles were for organizations or establishments that have a distinguished reputation.

The petitioner submitted sufficient documentary evidence demonstrating that he performed in a leading or critical role for the Research and Development Foundation of USB. Specifically, the petitioner served as CEO from 1995-1997 and president from 1999-2001. Although the petitioner submitted screenshots from www.usb.ve and www.funindes.usb.ve regarding background information and mission of the foundation, the petitioner failed to submit any independent, object documentation demonstrating that the Research and Development Foundation of USB has a distinguished reputation. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-promotional material).

Similarly, the petitioner submitted sufficient documentary evidence demonstrating that he performed in a leading or critical role for the Energy Institute of the Americas (EIA). Specifically, the petitioner collaborated in the creation of EIA in 1995 and has been an executive director since 2004. However, while the petitioner submitted recommendation letters from EIA, along with screenshots from EIA's website, the petitioner failed to submit any independent, objective evidence establishing that EIA has a distinguished reputation. The AAO is not persuaded that every organization that is affiliated with an educational institution automatically qualifies as an organization that has a distinguished reputation.

The petitioner also submitted documentation reflecting that he was appointed to be part of the Coordinating Committee for the Evaluation of the Aerospace Project between the Venezuelan Ministry of Science and Technology (VMST) and the Lone Star Space Access Corporation (LSSAC). The petitioner failed to submit any documentation demonstrating that his role on the committee was leading or critical; simply serving on a committee is insufficient to meet this criterion unless the petitioner demonstrates that his role was leading or critical to VMST or LSSAC as a whole. Although the petitioner submitted a screenshot from www.mcti.gob.ve regarding background information of VMST, the petitioner failed to submit any independent, objective evidence reflecting its distinguished reputation.

In addition, the petitioner claimed eligibility for this criterion based on his role as a member of the editorial advisory board for the International Institute of Informatics and Systematics (IIIS). However, the regulations contain a separate criterion regarding the judging of the work of others. 8 C.F.R. § 204.5(h)(3)(iv). The AAO will not presume that evidence relating to or even meeting the judging criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Finally, the petitioner claims eligibility for this criterion based on his position at Florida International University (FIU). However, the petitioner failed to demonstrate that his role as instructor in the Mechanical and Materials Engineering (MME) department is leading or critical to FIU as a whole. According to the 2010-2011 undergraduate catalog submitted by the petitioner, he is listed as one of 21 professors or instructors within the department. The petitioner failed to distinguish himself from the other 20 instructors or professors in the department, let alone from FIU as a whole. In fact, when compared to Dr. who is the MME, it appears that the petitioner performs in a far lesser role. Moreover, the petitioner performs in a subordinate role when compared to Dr. who is the College of Engineering and Computing at FIU. While the petitioner submitted recommendation letters praising the petitioner as a faculty member, simply being viewed as competent or even well-liked by students does not necessarily equate to a leading or critical role. Again, not only has the petitioner failed to demonstrate that he performs in a leading or critical role for MME, the petitioner failed to establish that he performs in a leading or critical role for FIU as whole.

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. As such, the AAO withdraws the decision of the director for this criterion.

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

B. Summary

The petitioner has satisfied the antecedent regulatory requirement of three types of evidence.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in

the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1115.

In evaluating the AAO's final merits determination, the AAO must look at the totality of the evidence to determine the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner is a member of associations in his field, the petitioner has served on editorial boards, and the petitioner has authored articles in professional journals. However, the personal accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The AAO determined that the petitioner met the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) based on his membership with the Academy of Engineering and Environment of Venezuela in 2004 and the Venezuelan Foundation for Promotion of Researchers in 2004. However, the petitioner failed to submit any documentation reflecting the petitioner's role, participation, or accomplishments for either of the associations, so as to demonstrate sustained national or international acclaim since 2004.

Moreover, the AAO determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) based on his judging of the National Award for the Best Scientific, Technologic, and Innovative Work by the Venezuelan Ministry of Science and Technology in 2001 and the Andres Bell Mention Applied Sciences Year Award by USB in 2003. Further, the petitioner has served on the editorial advisory board for the conference proceedings of IIIS since 2003. It is noted that the petitioner also submitted a letter from Dr. [redacted], [redacted] *Ciencia*, dated February 25, 1999, requesting the petitioner to be a reviewer for the journal; however the petitioner failed to submit any documentary evidence reflecting that the petitioner has actually reviewed any papers for *Ciencia*. Besides participating as a member of the editorial advisory board for IIIS, there is no evidence that the petitioner has judged the work of others since 2003 that would be reflective of sustained national or international acclaim in the field.

In addition, the AAO determined that the petitioner met the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi) based on the authorship of nine articles from 1994 to 2009. However, only two of the articles were published after 2004. Further, when compared to the authorship of the petitioner's references, it appears that his references are far above the accomplishments of the petitioner. For example, Dr. indicated the authorship of over 37 articles, Dr. indicated the authorship of over 94 articles, and Dr. indicated the authorship of over 70 articles. Although the petitioner met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the moderate publication of such articles demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is inherent to scholars and researchers, the AAO will also evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that his work has been cited 4 times. While these citations demonstrate a little interest in his published work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Although the AAO determined that the petitioner failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner claimed eligibility based on the Cross of the Venezuelan Air Force Third Class on December 10, 1995, the Order July 18th on July 18, 2002, a Diploma Merit Award on April 12, 1996; and a certificate for contributions and participation during defense and national security conferences on April 1, 1999. There is no evidence demonstrating that the petitioner received any honors since 2002 that would be indicative of sustained national or international acclaim and that his achievements have been recognized in the field of expertise.

Furthermore, while the AAO determined that the petitioner failed to meet the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner's role for the Research and Development Foundation of USB as was from and the petitioner's role for Although a screenshot from EIA lists the petitioner as an to the present, the petitioner failed to submit any documentary evidence reflecting that he has been actively and currently involved with EIA. In fact, according to a recommendation letter from the petitioner "*was* very active with the [EIA's] activities [emphasis added]" indicating that the petitioner is no longer active with EIA even though he is still listed as an Currently, the petitioner performs the role as an instructor and professor at FIU

since 2005, but the record of proceeding fails to reflect that the petitioner has served in a leading or critical role reflecting sustained national or international acclaim.

Further, while the AAO found that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based his claim of eligibility almost entirely on recommendation letters. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from individuals, especially when they are colleagues of the petitioner without any prior knowledge of the petitioner's work, supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Again, none of the letters submitted on behalf of the petitioner fail to reflect any original contributions of major significance made by the petitioner. Moreover, the petitioner's original research findings do not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the petitioner's work was "original" in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That 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)..." Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as a economics professor of extraordinary ability. To argue that all original research is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

As indicated above, the petitioner's documentary evidence comprises of evidence almost entirely from 1994 – 2004. In fact, since 2004, the petitioner has served on the advisory editorial board of IIIS and has authored and published two articles. The record of proceeding is almost void of any of the petitioner's accomplishments since 2004. The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has *sustained* national or international acclaim and that his or her achievements have been recognized in the field of expertise [emphasis added]." Although the petitioner met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the petitioner failed to demonstrate *sustained* national or international acclaim and that his achievements have been recognized in the field of expertise since 2004. *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 evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as a mechanical engineer. The regulation at 8 C.F.R. § 204.5(h)(3) requires "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that he is a

member of associations, has judged the work of others, and has authored scholarly articles, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

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. In *Matter of Racine*, 1995 WL 153319 at *1, *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.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Likewise, it does not follow that the petitioner who has not offered any evidence that distinguishes him from others in his field, should necessarily qualify for approval of an extraordinary ability employment-based 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."

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was among that small percentage at the very top of the field of endeavor.

III. CONCLUSION

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the

initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.