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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

DATE: **FEB 23 2012** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

**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 the sciences and 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 asserts that the petitioner meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii) – (vi), (viii), and (ix). 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 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).

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

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on June 11, 2010, seeks to classify the petitioner as an alien with extraordinary ability as an engineer in the petroleum industry specializing in deepwater well completion and intervention. At the time of filing, the petitioner was working for Shell International Exploration and Production Inc. as a Senior Staff Production Engineer. 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 submitted a certificate issued by [REDACTED] to the petitioner stating: "You and your colleagues of the BC-10 team have been selected as winners of the 'Most Enterprising Team' award in Wells for your achievements in 2008. The award is presented to the Wells team that delivers exceptional performance results whilst creating a sustainable performance culture." The petitioner also submitted a February 11, 2002 e-mail from his then supervisor [REDACTED], complimenting the petitioner for his "contribution to the success of the [REDACTED] project." The preceding documentation reflects internal company recognition by the petitioner's employer rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The director discussed the 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); *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 has not established that he meets this regulatory 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,

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

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.

In response to the director's request for evidence, the petitioner submitted evidence of his membership in the [REDACTED]. There is no documentary evidence (such as bylaws or rules of admission) showing that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. 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*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that he meets this regulatory 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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

The petitioner submitted an article coauthored by the petitioner and four others in the April 2010 issue of *World Oil* entitled "Successful drilling and completion at BC-10 using surface BOP system." This article constitutes material written by the petitioner about his own work rather than published material about himself. Thus, the article does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The AAO will fully address the petitioner's authorship of scholarly articles under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi).

The petitioner submitted an article in *Oil & Gas Journal* entitled "Special Report: Shell developing heavy oil in deep water off Brazil." The date and author of the article were not provided as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article is not about the petitioner. The article lists a technical paper (#112788) presented by the petitioner and five others at the March 2008 International Association of Drilling Contractors (IADC)/SPE Drilling

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

Conference in its "References" section, but the article does not discuss the petitioner. The plain language of this regulatory criterion requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submitted an article in the January/February 2008 issue of *Drilling Contractor* entitled [REDACTED] looks to the cutting-edge of today, plans for the challenges of tomorrow," but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The article (beginning on page 90) includes the abstracts for each of the ninety technical papers being presented at the 2008 IADC/SPE Drilling Conference in Orlando. The small portion of the article in [REDACTED] summarizing the petitioner's technical paper [REDACTED] in 1,900 m of Water" (starting on page 115) is identical to the abstract for the paper written by the petitioner and his coauthors. Thus, the content of the article in *Drilling Contractor* devoted to the petitioner's work was simply a duplicate of his own technical paper abstract (#112788) and not the result of independent media coverage about the petitioner. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" relating to his work rather than simply about the petitioner's work. 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. It cannot be credibly asserted that the preceding material in *Drilling Contractor* is "about" the petitioner.

The petitioner submitted a comprehensive list of abstracts for the "2009 SPE/IADC Drilling Conference" in the January/February 2009 issue of [REDACTED]. The list includes an "Editor's note" stating: "The following abstracts represent papers . . . that were scheduled as of 6 January to be presented at the 2009 SPE/IADC Drilling Conference . . ." The abstract for the petitioner's technical paper [REDACTED] in 1,900 m of Water" appears on page 96 and is five sentences in length. The material in the January/February 2009 issue of [REDACTED] is a summary of the petitioner's technical paper abstract [REDACTED] and not independent media coverage about the petitioner. Again, it cannot be credibly asserted that the preceding material in [REDACTED] is "about" the petitioner.

The petitioner submitted documentation indicating that four of his technical papers are available for download via the OnePetro online library operated by the SPE. The documentation submitted from the OnePetro website constitutes material written by the petitioner about his own work rather than published material about himself. Thus, the submitted material does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted copies of five technical papers [REDACTED] that cite to his work. Two of the citing papers, [REDACTED] and [REDACTED] include self-citations by the petitioner's coauthors [REDACTED]. The petitioner also submitted an article in [REDACTED] Shell developing heavy oil in deep water off Brazil" that specifically references his work. Articles which

cite to the petitioner's work are primarily about the authors' own work, and are not about the petitioner or even his work. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." With regard to this regulatory criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. The submitted papers do not discuss the merits of the petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other information so as to be considered published material about the petitioner as required by this criterion. Moreover, the AAO notes that the submitted papers citing to the petitioner's work similarly referenced numerous other authors. The papers citing to the petitioner's work are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In light of the above, the petitioner has not established that he meets this regulatory 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 petitioner submitted documentation indicating that he performed internal company reviews for [REDACTED] including the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (GD-1) proposal, the [REDACTED] and the [REDACTED]

In response to the director's request for evidence, the petitioner submitted additional documentation regarding his work as a completions reviewer on the [REDACTED] Review project. The petitioner's documentation included a December 22, 2003 e-mail from [REDACTED] [REDACTED] stating:

The [REDACTED] . . . was discovered in 2002. The field was acquired as part of the Enterprise acquisition. [REDACTED] holds 58% and is Operator; [REDACTED] has 25% and [REDACTED] 17%. The [REDACTED] Agreement] is favorable to the Operator and CVX do [sic] not require partner approval to proceed with key phases of the development planning. This limits [REDACTED] leverage to mostly attempting to influence the operator.

The petitioner also submitted a July 12, 2010 letter from [REDACTED] [REDACTED] who states that he was employed by [REDACTED] from 1992 – 2008 and that he worked directly with the petitioner from 2000 – 2003. [REDACTED] further states:

On a given project, each expert will review his/her discipline of the work of others on the projects. So, for example, Completions is [the petitioner's] area and he would be the sole reviewer for Completions. Much depends on these internal peer reviews; if the experts are wrong, the cost to the company can be many millions of dollars.

The AAO finds that the petitioner's participation as a completions reviewer for internal [REDACTED] projects and for the company's [REDACTED] and [REDACTED] meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory 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, scholarly, or business-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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted evidence indicating that he has coauthored several conference papers [REDACTED] 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, trade groups, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. 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. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. The petitioner did provide evidence of a few independent cites to his presented work. The number of independent citations per conference paper, however, is minimal. The petitioner's citation record, by itself, is not indicative of original contributions of major significance in the field. There is no evidence showing that any of the petitioner's conference presentations have been frequently cited by independent engineering professionals or have otherwise significantly impacted the field.

On appeal, the petitioner submits documentation indicating that four of his conference papers are available for download from the OnePetro online library operated by the SPE. According to their "Download History" since 2007, paper [REDACTED] was downloaded 351 times, paper [REDACTED] was downloaded 294 times, paper [REDACTED] was downloaded 77 times, and paper [REDACTED] was downloaded 109 times. The petitioner has not established that this level of readership is indicative of original contributions of major significance in the field.

The petitioner also submitted letters of support discussing his work.

[REDACTED] who specialized in [REDACTED], states that he previously worked with the petitioner at [REDACTED] United Kingdom. [REDACTED] further states:

In March 1995, [the petitioner] managed the offshore platform installation, which resulted in the "World['s] First offshore large bore coiled tubing deployed electrical submersible pump (ESP) Completion," which was successfully commissioned in well AA-03S1 on Auk in Scotland. The Artificially Lifted well boosted platform production from 4,000 barrels of oil per day (bopd) to 12,000 bopd.

[REDACTED] has been recognized by the industry as an excellent example of focused Operator/Vendor Project co-operation to extend the ESP installation envelope. Use of coiled tubing run ESP's in this mode, with production up the coiled tubing, has potential for a large impact on minimizing prime rig and derrick time for installation & workover and the overall life cycle cost of ESP fields.

[REDACTED] was a first class example of new technology application. Importance of detailed planning and dry runs to achieve success in the field was demonstrated. [REDACTED] (Co-Authored by [the petitioner] and presented at [REDACTED] 6th May 1996).

There is no evidence showing that the preceding conference paper is frequently cited by others in the field or that the petitioner's work for this project otherwise constitutes to an original contribution of major significance in the field.

[REDACTED] continues:

[REDACTED] was tasked with developing the Gas Project to convert the Philippine nation's reliance upon diesel combustion for power generation to a cleaner natural gas solution.

\* \* \*

[The petitioner] was hand picked by the team to fulfill the position of [REDACTED]

\* \* \*

[The petitioner] developed the detailed Completion design in Houston, tendered the Completion hardware & services in Houston, and then relocated to Manila to recruit staff, develop contracts and procure & manage equipment. Traditional permanent downhole gauges (PDPG)s display a history of early failures. [REDACTED] sought 7 years or more

service life from [REDACTED]. Accordingly [the petitioner] tendered the [REDACTED] under a unique "Pay for Data" contract. The contracting method tied the original equipment manufacturer to hardware execution & service performance. The Completion hardware execution was also tied to a "Right First Time" incentive element.

\* \* \*

The wells were perforated and flowed gas to the rig at an unprecedented 120 million standard cubic feet per day (mmscf/day), a sizeable flowrate for a rig temporary welltest spread. The 5 High Rate Gas Wells were executed on time and within budget.

The achievement was [REDACTED] first Deepwater High Rate Gas Wells using Horizontal Christmas Trees and Large Bore Corrosion Resistant Alloys (CRA) tubulars & accessories.

Of the [REDACTED] installed and working in [REDACTED] installation over half are still performing and have yielded in excess of 8 years service which has allowed the production team to defer Phase 2 field infill work offering considerable project saving.

While the petitioner's work for the [REDACTED] project was important to his company's drilling operations for that particular project, there is no evidence demonstrating that his original work for the project was recognized beyond the company such that his work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to one's employer or immediate projects. With regard to the petitioner's occupation, the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on February 8, 2012 and incorporated into the record of proceedings), states:

*Petroleum engineers* design methods for extracting oil and gas from deposits below the earth. . . . They design equipment and processes to achieve the maximum profitable recovery of oil and gas. Because only a small proportion of oil and gas in a reservoir flows out under natural forces, petroleum engineers develop and use various enhanced recovery methods, including injecting water, chemicals, gases, or steam into an oil reservoir to force out more of the oil and doing computer-controlled drilling or fracturing to connect a larger area of a reservoir to a single well. Because even the best techniques in use today recover only a portion of the oil and gas in a reservoir, petroleum engineers research and develop technology and methods for increasing the recovery of these resources and lowering the cost of drilling and production operations.

(Emphasis added.) See <http://www.bls.gov/oco/pdf/ocos049.pdf>. If the regulation at 8 C.F.R. § 204.5(h)(3)(v) is to have any meaning, it must be presumed that merely performing routine duties inherent to one's employment is not necessarily indicative of original scientific or business-related contributions of major significance in the field.

██████████ further states:

[The petitioner's] project achievements from 2005 through 2010 have been in ██████████  
██████████ where he engineered ██████████  
██████████ of a unique deepwater completion system that employs ██████████  
Preventer (BOP) technology from a ██████████ Offshore Drilling Rig.

\* \* \*

[The petitioner] joined the ██████████ to provide Completions  
expertise to the ██████████ from 2004.

\* \* \*

Working largely solitary in the ██████████ [the petitioner] single handedly developed  
the ██████████ through "Basis of Design" and throughout securing of  
contracts.

\* \* \*

[The petitioner's] ██████████ design addressed a number of challenges  
around ██████████ land off, orientation and testing. The ██████████  
would limit the traditional features offered by a regular Subsea BOP. The Completion  
design incorporated a unique 1" umbilical hose system, run with the high pressure riser to  
seabed to facilitate testing & diagnostics. The ██████████ utilized a deep  
set Fluid Loss valve as primary barrier for upper completion deployment through the  
Surface BOP.

[The petitioner] introduced a discrete innovative barrier technique, applying a swell  
packer, run with the upper completion to seal off and provide a secondary barrier below  
the gravel pack port closure sleeve.

\* \* \*

[The petitioner's] design was the first time a swell element has been used in such a  
format. . . . When the well produces hydrocarbons, the swell element increases in  
diameter and forms an additional seal below the port closure sleeve, isolating the  
potential leak path over lifecycle.

The use of a swell element in this manner was a first to the industry and the simple yet  
unique approach has significantly de-risked the space out operation, and dis-associated  
tubing hanger land-off from tailpipe interfacing. . . . The net result was also the easing of  
the tally of the space out operation, which would traditionally have been particularly  
precise & onerous.



There is no evidence showing that the preceding conference paper is frequently cited by others in the field, that technologies originated by the petitioner are being widely applied by others in the offshore drilling industry, or that his findings otherwise constitute original contributions of major significance in the field.

continues:

The . . . selected [the petitioner] in the position of responsible for the Deepwater Completions.

\* \* \*

He worked largely in isolation within the as the sole provider for Completion expertise, working from the and the he designed the

The Completion included exotic downhole completion commodity and tubular materials required to tolerate the high anticipated H<sub>2</sub>S levels through start up and full well lifecycle of 25 years.

Within the industry at this time traditional permanent downhole production gauges (PDPG)s were observed to suffer from early failures.

\* \* \*

To tackle permanent downhole production gauge longevity [the petitioner] tendered the contract with a novel approach. performance & lifecycle linked the original equipment manufacturer to the hardware installation & service life. [The petitioner] also contracted the Completion hardware execution in a similar incentive element with the installation also tied to a "Right First Time" installation. He sourced specialist personnel from within the Completion contract to ensure offshore staff domiciled in Manila and were tied to project loyalty and continuity.

\* \* \*

When I left to join another operator, [the petitioner] had been selected to join the screening and preparing for Concept Selection. The now renamed as included the Concept Selection milestone, Detailed Design and execution which concluded with delivering a unique deepwater completion system that employs 13 5/8" Surface Blow Out Preventer (BOP) technology from a Generation 3 Rig.

\* \* \*

As the sole [the petitioner] single handedly designed the He developed the "Basis of Design" through

the formal Design milestone securing contracts and sourcing staff. [The petitioner] provided Completions discipline expertise to early screening to evaluate & finalize the options leading to Concept Selection. The Detailed Design phase required development and assurance of unique [redacted] technology that had never been applied to subsea Completions.

[redacted] discusses the petitioner's work for [redacted] but he does not provide specific examples of industrial or commercial implementation of the petitioner's work beyond the petitioner's employer. For example, [redacted] does not indicate that [redacted] has patented, licensed, or extensively marketed the petitioner's specific [redacted] technology. Thus, the impact of the petitioner's [redacted] technology on the field at large is not documented in the record.

The petitioner submitted an article entitled "[redacted] moves [redacted] forward" (posted on the websites of [redacted] as evidence of the adoption of his work by [redacted]. The article quotes [redacted] Venture Manager for [redacted] but the article does not mention the petitioner. The article states:

The [redacted] system was designed to bring versatility, installation savings, and operational efficiency to ultra deepwater, high pressure fields. Developed by [redacted], the [redacted] is under construction in Rio de Janeiro for use on [redacted]

\* \* \*

The [redacted] development process involved design, manufacturing, quality assurance, and procurement reviews from each of its major centers. The result is a globally accepted system that can be manufactured at any FMC Technologies facility in the world.

Already, the [redacted] is a success in the offshore industry. First commercial orders have been received for [redacted] and [redacted] in Brazil and the Gulf of Mexico, respectively, as well as a 10-year supply agreement for their operations in Asia-Pacific. Additionally, [redacted] has placed orders for its [redacted] in Congo.

For its initial development, [redacted] worked with [redacted] to provide solutions for four major projects in different parts of the world. . . . The unique development saved [redacted] in manufacturing costs. Because of that success, [redacted] has contracted for the installation of additional [redacted]s in the near future.

Because of its flexibility, [redacted] is pursuing use of the [redacted] in shallow water from a jackup rig. It is expected that this market could add another 20 to 40 trees per year in sales volume and revolutionize the use of subsea systems in shallow water.

On appeal, counsel argues that the preceding article "shows that [redacted] took technology proven during the design and execution of [redacted] by [the petitioner's] [redacted] completions." The AAO notes that the preceding article focuses on the commercial success of [redacted] and [redacted] interest in the [redacted], not the petitioner's [redacted] technology. There is no documentary evidence from [redacted] indicating that the company has utilized or placed orders for specific surface [redacted] developed by the petitioner. Regardless, even if the petitioner were to demonstrate [redacted] utilization of his original [redacted] technology, the AAO cannot conclude that the technology's application by a single company outside of his employer is indicative of a contribution of major significance in the field.

[redacted] states:

My most recent encounter with [the petitioner's] work was on the [redacted] in Campos Basin Brazil, where [redacted] was planning to develop a [redacted] in order to exploit the lower cost Generation 3 rig rates and push the envelope of Generation 3 rig performance from 1,000m traditional waterdepth capability to a much deeper envelope of 2,000m by use of [redacted] technology. My parent company was invited by [redacted] to evaluate acquiring an interest in the [redacted]

\* \* \*

My company decided not to acquire the interest offered as the wide range of new technologies planned to be used in the development increased the risk of project delays and cost overruns.

[The petitioner] was selected as the [redacted] for screening technologies in Front End Engineering and Design, to develop the [redacted]. He created the [redacted] Detailed Design and developed the "Basis for Design." He took the design through scrutiny for effectiveness in installation, operability and lifecycle, executed the [redacted] completion Installations and handed the wells over to the host asset for production.

\* \* \*

The Project honored its First Oil milestone and has delivered on time and within budget.

[redacted] does not provide specific examples of how the petitioner's surface BOP design is being utilized by others throughout the field or otherwise constitutes an original contribution of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contributions be "of major significance in the field" rather than limited to his particular employer.

\_\_\_\_\_ states:

I joined the \_\_\_\_\_ in the position of \_\_\_\_\_, where [the petitioner] had been selected to provide \_\_\_\_\_ to the \_\_\_\_\_

\* \* \*

[The petitioner] performed the formal design review in the Philippines and transferred to Manila to become a senior member of my \_\_\_\_\_

\* \* \*

[The petitioner] was responsible for the development of an innovative contracting strategy. He created a \_\_\_\_\_ based upon a "Right First Time" execution performance and developed a unique "Pay for Data" method of remuneration for the \_\_\_\_\_ contract.

\_\_\_\_\_ does not provide specific examples how the petitioner's contracting strategy based on "Right First Time" execution performance and a "Pay for Data" method of remuneration has impacted the industry beyond the petitioner's employer. There is no documentary evidence showing that the petitioner's contracting methods have been applied throughout the industry or otherwise equate to original business-related contributions of major significance in the field.

\_\_\_\_\_ states:

I . . . encountered [the petitioner] when, as a \_\_\_\_\_ venture, I was seconded to the \_\_\_\_\_ in the Philippines to provide \_\_\_\_\_ expertise and execution support. [The petitioner] had been engaged with the \_\_\_\_\_ in Houston to perform analysis & Detailed Design of the Permanent Downhole Completion and develop the \_\_\_\_\_ interfaces. [The petitioner] moved to Manila to join the \_\_\_\_\_ develop contracts and recruit personnel.

\* \* \*

\_\_\_\_\_ sought long term performance for the \_\_\_\_\_ are deployed integral with the Completion and reside near the reservoir at bottomhole temperature and pressure to provide data over the lifecycle of the well.

Within the industry \_\_\_\_\_ were observed to suffer from early failure and a short lifespan, which would leave production and surveillance operators compromised without the ability to monitor the effects on well pressures.

[The petitioner] developed a novel [REDACTED] contract that tied the vendor to an incentive-based installation and remuneration over an extended lifecycle. He developed an incentive-based element to the permanent downhole completion contract on the premise of "Right First time" installation, and developed an integrated service contract for commissioning and Welltest. He provided Completion discipline input to the selection and tendering of the Subsea Test Tree, which was used to deploy the downhole completion.

[The petitioner] developed a manpower strategy where the completion and the welltest vendor provided offshore specialists to support the completion installation through project duration. This novel method of staffing the team with specialists in this manner assured a depth of Completion and Welltest, hands on capability, and the intimacy within the operation to thoroughly plan prime time and concurrent rig activities.

The Gas Well Project was executed on time and within budget.

[REDACTED] indicates that the petitioner performed his duties admirably for [REDACTED] and developed a novel [REDACTED] contract, but he does not provide specific examples of how the petitioner's contracting methodology is being utilized by others in the industry or otherwise constitutes an original business-related contribution of major significance in the field.

[REDACTED] states:

I worked very closely with [the petitioner] from 2000 – 2003, when I was seconded as a [REDACTED] where we both worked on the [REDACTED] [The petitioner's] role was [REDACTED] and we worked very closely together.

\* \* \*

[The petitioner] had refined the [REDACTED] to an incredibly uncomplicated level for simplicity and reliability; the near metal to metal system had removed traditional complexities such as polished bore receptacle (elastomeric sealing), had employed a Corrosion Resistance Alloy (CRA) "envelope" of protective casing between key downhole components exposed to petroleum fluids, the upper production packer and liner packer had allowed for lifecycle workover, maintaining a full 6.00 inch "monobore" access from top to bottom along the 12,000 foot length, and had accommodated high production rate and vibration mitigation in selecting Safety Valve considerations.

\* \* \*

Both contractually and commercially, [the petitioner] was also innovative. He introduced factors to achieve this including incentivising the completion contract, [redacted] contract for [redacted] for key consultant staff, and a tremendous effort in teamwork among the main [redacted] and [redacted] stakeholders. The high rate gas [redacted] was extremely successful, and the experience and drive of [the petitioner] was absolutely critical to the success.

[redacted] discusses the petitioner's work for the [redacted] including the petitioner's introduction of the [redacted] but he does not provide specific examples of how the petitioner's work is being utilized by others in the field beyond their employer. Once again, a contribution to the petitioner's employer is not necessarily an original contribution of major significance to the field at large.

In response to the director's request for evidence, the petitioner submitted a second letter from [redacted] stating:

[The petitioner] has been heavily involved in leading the development of the industry capability in the area of [redacted]. In prior role he has also pioneered well completion techniques. In total he has three World Firsts to his credit:

- The [redacted] was a World First.
- The [redacted] were a World First.
- The [redacted] was a World First.

No team had performed such a design and execution before and [the petitioner] was responsible for the analyses and design, detail design, or execution, and in the case of [redacted] screening, concept selection, detailed design and execution.

In addition, commercially, his [redacted] contracting initiative was a [redacted] first for [redacted] and "Right First Time" contracting initiative was a [redacted] first for [redacted]. So in the business sense, this is pioneering. The [redacted] initiative proved considerably successful as more than half of the permanent downhole gauges successfully installed in [redacted] are still functioning, exceeding expectation by a number of years. These systems have saved [redacted] millions of dollars in being able to defer the initiation of Phase 2 [redacted].

\* \* \*

[The petitioner's] work extends the water depth capability of the older, [redacted] rigs for deeper water development. By increasing the rig capacity, equipping the rig with [redacted] High Pressure reduced diameter marine riser and a [redacted] the weight of the hardware connecting the rig to the

seabed hardware can be significantly reduced, allowing the rig to accommodate a deeper water depth drilling & completion.

states that the and the were all "a World First." While the petitioner's well completion projects may have been original, there is no documentary evidence demonstrating that his engineering techniques rise to the level of contributions of "major significance" in the field. There is no evidence showing that the petitioner's conference papers relating to the preceding projects are frequently cited by independent experts in the field, that his methodologies are being widely implemented by others in the petroleum engineering field, or that his work otherwise equates to original contributions of major significance in the field.

states:

There are two to three individuals, worldwide in the discipline of completions engineering that understand how to make this technology work in [redacted]. [The petitioner] is the leading peer in this group and he undoubtedly has a unique set of skills that can deliver [redacted] solutions. He has the knowledge and skills that will allow the offshore industry in the U.S. to introduce a technology that will allow offshore deepwater operations to proceed in a more environmentally safe and Sound manner.

comments on the petitioner's unique technological knowledge and engineering skills. Assuming the petitioner's skills and knowledge are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998). 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.

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 engineer who has made original contributions of major significance. 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 regulatory 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 submitted evidence indicating that he coauthored five conference papers [REDACTED]. The petitioner's [REDACTED] paper states: "Contents of the paper, as presented, have not been reviewed by the Society of Petroleum Engineers, its officers, or members." The petitioner's [REDACTED] paper states: "Contents of the paper, as presented, have not been reviewed by the Offshore Technology Conference and are subject to correction . . . ." The petitioner's [REDACTED] paper states: "Contents of the paper have not been reviewed by [REDACTED] and are subject to correction . . . ." The petitioner's [REDACTED] paper states: "Contents of the paper have not been reviewed by the [REDACTED] and are subject to correction . . . ." The petitioner's [REDACTED] paper states: "Contents of the paper, as presented, have not been reviewed by the Society of Petroleum Engineers and are subject to correction . . . ." There is no documentary evidence establishing that the preceding papers were "in professional or major trade publications or other major media."

The petitioner also submitted an article coauthored by the petitioner and four others in the April 2010 issue of *World Oil* entitled "[REDACTED]" using [REDACTED] but there is no circulation evidence showing that *World Oil* qualifies as a major trade publication or some other form of major media. In addition to the preceding deficiency, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner's "authorship of scholarly *articles* in the field, in professional or major trade *publications* or other major *media*" [emphasis added] 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); *Snapshot.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 authorship of the single article in *World Oil* meets the elements of this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the petitioner's authorship of scholarly *articles* in more than one major publication.

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

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

The petitioner initially submitted white papers he prepared for Shell and copies of his internal company presentations. As previously discussed, the petitioner also submitted evidence of his internal company recognition (such as the [REDACTED] award in [REDACTED] and letters of support discussing his projects for [REDACTED]. For example, [REDACTED] who served as the [REDACTED] discussed the petitioner's role on his team as a [REDACTED] for [REDACTED]. The petitioner failed to submit an organizational chart or other evidence from [REDACTED] documenting how his positions as [REDACTED] fell within the company's general hierarchy. A conclusion that the petitioner played a leading or critical role for his employer simply by competently working in a position that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that employers do not typically hire individuals to fill roles that serve no purpose for the employer; yet not every employee for a distinguished organization meets this criterion. In determining whether the petitioner's role was critical the AAO looks at his performance in that role and how it contributed to the organization's activities beyond what is normally expected of its engineering staff. The petitioner's evidence does not demonstrate how his positions differentiated him from the other engineering staff employed by [REDACTED] let alone the company's senior managers and corporate executives such as [REDACTED]. The evidence submitted by the petitioner does not establish that he was responsible for [REDACTED] success or standing to a degree consistent with the meaning of "leading or critical role."

Aside from the preceding deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to submit supporting documentary evidence showing that his role for Shell meets the elements of this criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted his 2009 Form W-2, Wage and Tax Statement, from [REDACTED] reflecting earnings of \$711,359.54. The AAO concurs with the

director's finding that the salary earned by the beneficiary in 2009 meets the plain language requirements of this regulatory criterion.

*Summary*

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. 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 AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (v), (vi), and (viii).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the petitioner's evidence does not rise to the level of nationally or internationally recognized awards for excellence in the field. The petitioner's receipt of internal recognition from his employer is not 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 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 SPE requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. The petitioner has not established that his SPE membership is 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.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including an author, not being about the petitioner, or not being accompanied by evidence that they were published in major trade publications or other major media. The petitioner has failed to demonstrate that the material he submitted is 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 the field.

In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. The petitioner submitted evidence of his participation as a completions reviewer for internal [REDACTED] projects and for the company's [REDACTED]. Being assigned to review projects for [REDACTED] as part of his job responsibilities is not evidence of "national or international acclaim" in the field. The petitioner failed to submit evidence demonstrating that his peer review experience for [REDACTED] was indicative of recognition beyond his employer or its [REDACTED] or indicative of a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). The petitioner has not established that his review work limited to [REDACTED] and its [REDACTED] is indicative of or consistent with sustained national acclaim at the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as stated above, it does 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 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)..." In this case, the record does not contain sufficient evidence that the petitioner's original engineering work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not 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 documentation submitted for the category of evidence 8 C.F.R. § 204.5(h)(3)(vi), the petitioner has not submitted documentary evidence establishing that the conference papers he coauthored [REDACTED] were "in professional or major trade publications or other major media." Further, in regard to his article in the April 2010 issue of *World Oil*, there is no circulation evidence showing that *World Oil* qualifies as a major trade publication or some other form of major media. 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 petitioner submitted citation evidence indicating that none of his articles has been independently cited to more than three times per article. This minimal level of citation by others is not sufficient to demonstrate that the petitioner's work has attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii) is not 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.

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as an engineer in the petroleum industry, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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 the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained.

### III. Conclusion

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

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

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

**ORDER:** The appeal is dismissed.