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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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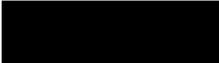
**U.S. Citizenship
and Immigration
Services**

B2



DATE: **JAN 05 2012**

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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; H.R. 723 101st Cong., 2d Sess. 59 (1990); 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, the petitioner submits a statement and a copy of the adverse decision. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

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 following ten categories of evidence.

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

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

(iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

(v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* 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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO's *de novo* authority).

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.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

A significant aspect is that although the petitioner provides letters from individuals asserting he received the International Road Federation (IRF) Leadership Award, he fails to provide evidence that he actually received the award. Additionally, [REDACTED] claims that by winning the IRF Leadership Award, the petitioner becomes an Executive Fellow of the IRF. Consequently, receiving this award is, in effect, indistinguishable from becoming an IRF Fellow. This observation is relevant due to the fact that the petitioner claims his IRF Fellowship under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). The AAO will not presume that evidence directly relating to the membership criterion is presumptive evidence that an alien meets a second criterion. Such a conjecture would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien submit qualifying evidence under at least three separate and distinct criteria. Where evidence directly relates to one of the regulatory criteria, USCIS is not obligated to consider that same evidence as comparable evidence to meet a second criterion pursuant to 8 C.F.R. § 204.5(h)(4).

Accompanying the initial filing, the petitioner submitted a letter from [REDACTED]. Within this letter, [REDACTED] attests that the petitioner received the IRF Executive Leadership Award, in addition to confirming the petitioner as a [REDACTED], and that the petitioner was part of the IRF Executive Leadership Program. It is important to note the letter contains three IRF elements: the award, the fellowship, and the program. The director concluded that the petitioner failed to meet the requirements of this criterion after she determined that the above award and the IRF Executive Fellow nomination were insufficient. The AAO acknowledges that the petitioner did not present the fellowship as qualifying evidence under this criterion; he presented it under the membership criterion at 8 C.F.R. § 204.5(h)(3)(iii), which the AAO will discuss later in this decision. Significantly, the petitioner failed to submit a separate award certificate and the selection criteria for the award, distinct from the fellowship.

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

On appeal, the petitioner relies on the eligibility criteria for the IRF Executive Leadership Program contained in [REDACTED] letter. Admission into a fellowship program, even a competitive one, is not an award or prize. The record contains no separate criteria for an award or even the award itself. As stated by the director, the petitioner failed to provide the eligibility criteria for the award, assuming the petitioner actually received an "award." The petitioner argues that the IRF selects recipients of this award based on, "not only outstanding academic accomplishments, but also extraordinary leadership in the transportation field." However, according to [REDACTED] letter, these standards are the criteria the IRF uses for candidate acceptance into the IRF Executive Leadership Program. As a result, the petitioner provides no evidence of an award or establishing the eligibility criteria related to an award which might establish the award is issued for excellence in the field of endeavor.

Additionally, as stated above, in reference to the IRF Executive Leadership Award, the only evidence the petitioner submits to establish he received this award in [REDACTED] is the above referenced letter from [REDACTED]

The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. There is no primary evidence demonstrating the petitioner received the IRF Executive Leadership Award. In this case, while the petitioner submitted a "confirmation," the petitioner failed to demonstrate that primary evidence does not exist or cannot be obtained. In the event the "confirmation" is submitted as an affidavit, this confirmation is insufficient as an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does the letter contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the

statements, under penalty of perjury. 28 U.S.C. § 1746. *See also INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980) (finding that unsworn statements made in support of a motion are not affidavits and thus are not entitled to any evidentiary weight). Therefore, the petitioner is presumed ineligible in that USCIS will not consider the above evidence to bear any evidentiary weight under this criterion or in the final merits determination pursuant to 8 C.F.R. § 103.2(b)(2). The petitioner provides a IRF Executive Leadership Program certificate. However, this serves as evidence that the petitioner completed the aforementioned program and does not purport to be a prize or an award.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of “prizes” and “awards” in the plural, which 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.³ Even if the IRF Executive Leadership Award were both documented and a qualifying award, which it is not, the petitioner only claims this one award and he cannot meet the plain language requirements of 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.

This criterion contains several evidentiary elements the petitioner must establish. The first is that there are associations (in the plural) in the petitioner’s field that consist of formal membership. The second requirement is documentary evidence that the petitioner is or was a member of these associations. The third element is that the associations require outstanding achievements (in the plural) as a condition of admittance. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field who determine if the aforementioned outstanding achievements are sufficient for admission.

The petitioner submits his [REDACTED] as evidence under this criterion. The petitioner provides the same letter from [REDACTED] discussed above. The membership the petitioner claims is as an IRF Executive Fellow. This colloquial use of the word “membership” is inconsistent with the term “member” as contemplated by the regulation. The petitioner has failed to establish

³ *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

that an IRF fellowship is a membership rather than admission to a program. IRF Fellowships are granted to help “launch” the careers of participants. The petitioner has not provided any evidence of bylaws or other official guidance regulating or identifying “membership” requirements of this fellowship. Consequently, this fellowship does not qualify as an association consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Additionally, the petitioner failed to submit evidence that admittance to this entity is judged, or adjudicated, by nationally or internationally recognized experts in their field.

Unlike a previous petition in the record of proceeding, the petitioner is not claiming Sigma Xi as a qualifying association and he submits no evidence of Sigma Xi’s definition of what constitutes “noteworthy contributions in research.” It is unclear why the petitioner has submitted evidence of his membership in Sigma Xi with the present petition, but did not include any reference to the association in any of his statements accompanying the petition. In the event that the petitioner inadvertently omitted references to Sigma Xi and he wished to have this association considered under this criterion, he failed to submit evidence establishing that Sigma Xi requires outstanding achievements of its members. As a result, this membership fails to meet the plain language requirements of this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of “membership in associations” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. As noted above, USCIS has the ability to interpret significance from whether the singular or plural is used in a regulation, which federal courts have upheld.⁴ Even if the IRF Executive Fellow were a qualifying association, which it is not, the petitioner only claims this one membership. Based on these numerous deficiencies, the petitioner has not submitted evidence that meets the plain language requirements of 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 petitioner submits a letter from [REDACTED] and a letter from [REDACTED]

The director determined the petitioner met the requirements of this criterion. The AAO departs from the director’s eligibility determination related to this criterion, as explained below. 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 letter from [REDACTED] indicates the petitioner served on a Technical Assistance Panel (TAP) covering the period from September 6, 2007, through May 27, 2008, the date of the letter. The duties of this panel include: attending TAP meetings; reviewing the long-range research plan, providing suggestions and comments on the direction of research; assisting the research committee

⁴ *Id.*

as requested in developing detail for plans, goals, and objectives; and assisting the committee in developing detailed project statements. This evidence is sufficient to establish the petitioner has met the plain language requirements of this criterion.

The letter from [REDACTED] indicates that on April 6, 2009, the petitioner was invited to serve as a project panel member. As a member of this panel, the petitioner reportedly performed duties that could be construed to entail judging the work of others in his field. Specifically, an attachment to [REDACTED] letter titled, *Functions of NCHRP* [National Cooperative Highway Research Program] *Panels*, includes the following duties: "Reviewing and evaluating project reports so as to ascertain the accomplishment of objectives and suitability for publication." Additionally, the petitioner provides a website printout from the NCHRP indicating that he accepted and served as a project panel member for this organization.

The petitioner also submits an email from [REDACTED] dated February 9, 2010, which reflects the petitioner's efforts on the abstract review for the ICCPT2010. From the evidence on record it is not apparent what the ICCPT2010 is, however this evidence postdates the filing of the petition. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). Therefore, a petitioner may not qualify for or rely upon evidence that postdates the petition's filing date and this evidence will not be considered in the final merits determination.

In light of the above, the petitioner has submitted evidence that establishes that he meets the plain language requirements of this criterion.

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

The petitioner submitted two expert letters in his initial filing. He asserts that his selection to the NCHRP, and his service for TxDOT serves as additional evidence under this criterion. The director determined the petitioner did not meet the requirements of this criterion. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original, but of major significance. The AAO must presume that the phrase "major significance" is not superfluous and, thus, that 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). To be considered a contribution of major significance in the field of science, it can be expected that the results of the petitioner's work would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The first expert letter is from [REDACTED]. [REDACTED] identifies multiple contributions the petitioner has made to the transportation industry. The first is the petitioner's Ph.D. dissertation which, "presents a very innovative methodology for the decision-making process for Intelligent Transportation Systems." [REDACTED] states that the direct benefits of the petitioner's dissertation are "that the federal, state, and local transportation agencies *can* save millions of dollars by using his methodology to make smart investments in Intelligent

Transportation Systems.” (Emphasis added.) Here, [REDACTED] identifies a possible future benefit that has not yet come to fruition. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a future date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). [REDACTED] also lists the petitioner’s research on the impact traveler information systems, such as road signage, on a commuter’s travel behavior and toll road choice. [REDACTED] concludes, “[The petitioner’s] original research laid a solid foundation to help other researchers understand how commuter’s toll road usage would change when traveler information is fed.” The professor states that the petitioner’s research findings have been adopted and implemented in Texas and Massachusetts, but the record contains no confirmation of this claim from officials in these states. Moreover, as the petitioner obtained his Ph.D. in Texas, any implementation in Texas would be local. [REDACTED] also mentions a research paper produced by the Transportation Research Board, during the timeframe when the petitioner was a board member. However, the professor does not indicate that this paper can be attributed primarily to the petitioner, other than the fact that the petitioner was a board member when the board produced the paper. While [REDACTED] identifies contributions the petitioner has made on his field, none of these contributions can be considered to be of major significance to the point that they have made a significant impact on the transportation field.

The second letter is from [REDACTED]. [REDACTED] identifies the same research on the impact of intelligent transportation systems as [REDACTED]. [REDACTED] also notes the petitioner’s designs have been implemented, but falls short of indicating a measurable impact on the transportation field. [REDACTED] denotes multiple methodologies the petitioner developed and states, “[The petitioner’s] papers based on this study have been published and attracted attentions worldwide.” However, [REDACTED] fails to identify any of the papers the petitioner has authored or their impact on his field. It is also important to note that the petitioner failed to provide any citations of his work even though he has had ample opportunity not only through filing the present petition and this appeal, but also through a previous extraordinary ability petition which USCIS denied. In reference to the petitioner serving on the NCHRP panel, [REDACTED] states, “[The petitioner] is guiding and shaping the future transportation system development in the United States. I firmly believe his extraordinary ability and insights *will* ensure the success of this important research.” (Emphasis added.) That the petitioner will provide a prospective benefit to the United States as a permanent resident is a separate requirement under the Act. *See* section 203(b)(1)(A)(iii) of the Act. However, [REDACTED] does not identify how the petitioner has already made a significant impact on his field, which is required by this regulatory criterion. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. This evidence does not establish that, as of the priority date, the petitioner had contributed to his field in a significant manner as required by the regulation. [REDACTED] concludes by stating that the petitioner is a “person with extraordinary scientific skills and [is] a rising star in the field of transportation research.” This statement clearly identifies the petitioner as one who has future potential to be a star, but like [REDACTED] letter, fails to

explain how the petitioner's contributions can already be considered to be of major significance to the point that they have made a significant impact on the transportation field.

The petitioner, and [REDACTED] submit that the petitioner's selection to the NCHRP, and his service for TxDOT as additional evidence to be considered under this criterion; however, the only evidence the petitioner provides is his statement contained within the appeal brief which consist of his selection on the NCHRP "to oversee the research in addressing the long-range strategic issues facing the transportation industry in the United States. It is a prestigious honor...[and] the outcome of this research will eventually be implemented to improve the future transportation system in the United States, which indicates how significant my contributins will be." Clearly, even the petitioner does not explain how he has contributed to his field in a significant manner, but asserts that he is moving in a direction which will enable him to do so in the future. As previous noted, A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also identifies his service on the TxDOT panel, but provides no explanation of contributions made to his field based on his work on this panel. The letters from [REDACTED] characterize the petitioner's appointments as honors, however, they provide no specifically identified contributions arising from this service.

The AAO acknowledges the claims of a shortage of qualified workers in the petitioner's field. This issue falls under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

The regulation requires original contributions of major significance in the field. While the petitioner has established he has made contributions to his field of endeavor, his achievements and accomplishments, as of the priority date, fail to rise to the level of being considered original or of "major" significance. As a result, the petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

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

This criterion contains two evidentiary requirements the petitioner must address. The first is that the evidence establishes that the petitioner provides evidence that he has authored articles (in the plural) of a scholarly nature in his field. The second relates to the publication or the medium in which the article must appear. The petitioner must provide evidence that the scholarly article appeared in what is considered a professional publication or major trade publication in the petitioner's field. Alternatively, the petitioner may provide evidence that the scholarly article appeared in what is considered major media. The petitioner must submit evidence satisfying both of these elements to meet the plain language requirements of this criterion.

The petitioner submits several works he authored in his field. The director determined that the petitioner failed to meet the requirements of this criterion. The petitioner does submit evidence of his authored manuscripts, however, the manuscripts bear no indicia of publication. According to the manuscripts, the petitioner presented his finding before: the Transportation Research Board; at the 2007 Conference of Freeway and Tolling Operations in the Americas; at the ITS (Intelligent Transportation Systems) World Congress 2004; and at the 12th World Congress on ITS. The petitioner also prepared reports for the Southwest Region University Transportation Center and the Texas Transportation Institute. The petitioner provides no documentary evidence to establish that any of the above manuscripts appeared in a professional publication, a major trade publication, or major media. He also fails to explain in either his initial filing or in the appeal how any of the manuscripts have appeared in one of the required publication types or media. Not every manuscript or research report will constitute a qualifying scholarly article. The petitioner also claims:

[M]uch of my publications' impact has come through means other than citations. For example, I have been selected by the experts in my field to serve in [sic] various advisory panels at both [the] national level and state level. The quality/impact of my publications is also an important factor in winning the [REDACTED]

However, none of the evidence the petitioner submits bears out this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is 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." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20.

The receipt of an award, evidenced by only a letter, and without evidence of the award's selection criteria is not consistent with achieving sustained national or international acclaim or being one of that small percentage who have risen to the very top of their field of endeavor. Likewise, merely

attaining "membership" as a Fellow in a program designed to "launch" careers is also not in keeping with achieving sustained national or international acclaim or being one of that small percentage who have risen to the very top of their field of endeavor.

As stated under the judging criterion, the petitioner reviewed plans and provided feedback while on a panel. The nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of the petitioner's national or international acclaim. *See Kazarian*, 596 F.3d at 1122. Reviewing plans and providing feedback for a state agency are consistent with achieving local or regional acclaim. However, this is not equivalent to national or international acclaim as judge. The petitioner also served as a panel member, the duties of which constitute judging. Selection as a panel member on a national-level panel, which encompasses judging duties is an accomplishment. Still, by itself, it is not extensive evidence representative of sustained national or international acclaim.

Letters from experts in the field, elicited in support of an immigrant petition, which fail to provide specific contributions of major significance cannot form the cornerstone of the petitioner's eligibility for this classification. In his letter, [REDACTED] states that the petitioner is a "person with extraordinary scientific skills and [is] a rising star in the field of transportation research." This statement clearly identifies the petitioner as one who has future potential to be a star, but has not yet risen to be viewed in the top percentage of his field.

As stated above, the petitioner has authored scholarly manuscripts and reports. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the field's response to these articles may be and will be considered in our final merits determination. The petitioner has failed to produce evidence related to the field's response to his authored articles. Additionally, the petitioner's assertion that appointment to two panels is indicative of a response to his articles without corroborating evidence lacks support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). A lack of evidence related to the quality of the medium in which the petitioner's articles appear, combined with the above noted flaws is not indicative of one who has achieved sustained national or international acclaim or who is one of that small percentage who have risen to the very top of their field of endeavor.

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. The petitioner, a research scientist, relies on: an undocumented award without indicating its criteria; receipt of a fellowship grant; serving on a state-level and a national-level panel without proof of the impact; letters from experts in the field who cannot identify the impact of the petitioner's contributions; and articles, of which none have appeared in the appropriate publications or major media, and of which the petitioner provides no citations or field response. While the petitioner's service on the national-level panel is notable, this alone is insufficient to establish the petitioner's eligibility, as "[t]he regulations regarding this preference classification are extremely restrictive." *See Kazarian*, 596 F.3d at 1122 (quoting *Lee v. Ziglar*, 237 F.Supp.2d 914, 918 (N.D.Ill.2002)). Although some of these elements may distinguish him from other

research scientists in the transportation field, the AAO will not narrow his field to others with his level of training and experience. Significantly, the petitioner's reference, [REDACTED] lists his own accomplishments in his biography. [REDACTED] is a professor at the Massachusetts Institute of Technology, has received multiple distinguished service and contribution awards, has an award bearing his name from Intelligent Transportation System Massachusetts, is the author of a graduate level text and of several prize-winning papers, has served on review panels for transportation programs at three universities and served as the chair on one additional panel, and is a member of six transportation related associations, serving as executive committee chair or on the board of three of these associations. Although the petitioner shows potential to be a future leader of his field, it appears that the highest level of his field is well above the level he has attained.

III. Conclusion

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

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

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

ORDER: The appeal is dismissed.