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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**



**PUBLIC COPY**

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DATE: JAN 10 2012 Office: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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. 723 101<sup>st</sup> 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 brief with supporting documentation. 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. 723 101<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.*; 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.<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

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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).

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 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria<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.*

This criterion contains three evidentiary elements the petitioner must establish. The first derives from the clear regulatory language; that the alien be the recipient of the prizes or the awards (in the plural). The next element is that the evidence establishes that the prizes or the awards have received national or international recognition. The final requirement relates to the criteria required to receive the award, which would indicate if the issuing entity bases their award selection on excellence in the petitioner's field of endeavor. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Within the petitioner's initial filing brief, he only claims one prize or award; [REDACTED] This is confirmed within his resume, which only lists this award. In response to the director's request for evidence (RFE), the petitioner claims an additional award, [REDACTED] On appeal, the petitioner claims a third award, the Science and Technology Progress Prize. The director determined that the petitioner failed to meet requirements of this criterion.

Regarding the claimed [REDACTED] the evidence submitted on appeal indicates it was awarded to a project (the Petrochemical Equipment Computer Aided Design System) as well as to the petitioner's employer, [REDACTED] The petitioner claims the director erred in his decision when he stated, "To be considered in this category [lesser prizes or awards] the award should be in the alien's name." The petitioner responds by stating, "Nowhere in the regulations is such a requirement explicitly enumerated. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth in 8 C.F.R. § 204.5(h)(3)(i)." The petitioner's appeal brief claims that due to the petitioner playing a critical role in the project that received the award, that it is appropriate to consider that he is, in essence, the recipient. The AAO does not subscribe to this assertion. The regulation governing the prizes and awards criterion requires, "Documentation of *the alien's receipt*

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

of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor” (emphasis added). 8 C.F.R. § 204.5(h)(3)(i). Therefore, it is clearly within the plain language of the regulation that the named recipient of the award must be the alien. To read the regulation in any other manner would be a deviation from the clear and plain language of the regulatory text. “[A] basic tenet of statutory construction, equally applicable to regulatory construction, [is] that [a text] should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.” *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 AAO may not depart from the clear regulatory text as the petitioner suggests. Additionally, the AAO’s interpretation of this regulatory criterion is supported in a recent district court decision providing that to meet the plain language requirements the lesser prizes or awards criterion, the alien [petitioner in the present case] must be the named award recipient establishing he was officially credited with, or given the award. *See Hristov v. Roark*, 09-CV-2731, 2011 WL 4711885, at \*1, \*7 (E.D.N.Y. Sept. 30, 2011).

On appeal, the petitioner provides new evidence reflecting that he is the recipient of this award. The translation of this evidence is consistent with the previously submitted evidence in that [REDACTED]. However, it also indicates the petitioner “is the awardee of this National Gold Award for the above awarded project.” This evidence sufficiently establishes the petitioner as a named recipient of this award.

The petitioner also provides evidence on appeal of this award’s national recognition. As the award is issued by the central Chinese government on a nationwide basis, it qualifies as a nationally recognized award. The evidence also provides the criteria that award recipients must meet and that the award is issued based on excellence in the field of endeavor. This new evidence, not available to the director, establishes that the petitioner is the recipient of a nationally recognized award for excellence in his field.

The documents accompanying the petitioner’s brief in response to the RFE contain several pieces of evidence related to the [REDACTED] such as the issuing authority, the purpose, criteria, and scope of the award, and the 2002 and 2004 award winners. Nonetheless, the petitioner has not provided evidence that he was the recipient of this award in 1996 or in any other year. As evidence of this award, the petitioner again offers evidence on appeal, which indicates the award’s recipient was a project [REDACTED], not the petitioner. As previously stated, the AAO will not consider any awards in which the petitioner is not the named recipient. *See* 8 C.F.R. § 204.5(h)(3)(i). *See also* *See Hristov v. Roark*, 2011 WL 4711885, at \*7.

In regard to the award being issued for excellence in the field of endeavor, on appeal the petitioner provides a document, which is titled, Official Document of [REDACTED]

Corporation. This is a foreign language document with an English translation. 8 C.F.R. § 103.2(b)(3) requires that, "Any document containing foreign language submitted to USCIS shall be accompanied by a *full* English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English" (emphasis added). The document is not a full English translation of the accompanying original foreign language document. Of the 33 "articles" which comprise this document, 11 of the "articles" bear no translated information. The sole text accompanying these insufficient "articles" is simply "N/A." This is considered to be a summary translation. As this translation is not a full English translation, the AAO cannot determine whether it supports the petitioner's claims and consequently, it will not satisfy the plain language requirements of this regulatory criterion.

Within the appeal brief the petitioner claims an award which he had not previously requested the director consider, even after receiving the RFE; the "Science and Technology Progress Prize" from [REDACTED]. The petitioner did not identify this award in the initial filing, on the petitioner's resume, or in response to the RFE. The sole form of evidence relating to awards submitted with the initial filing did contain an award with a similar title; the "Science and Technology Prize" (initial filing) vs. the "Science and Technology Progress Prize" (appeal brief). However, the petitioner failed to provide the director with any discussion related to this award and did not request that this award be considered under any regulatory criteria. The translation on appeal indicates the petitioner is the award's recipient establishing that he is the named recipient of this award.

The evidence the petitioner submits relating to this award's national or international recognition is an article from *China Petrochemical News*. However, there is no evidence in the record to establish the circulation or distribution data of this publication which might establish this published material has a national rather than a local or regional reach within China. It is incumbent on the petitioner to provide the evidence to establish his claimed awards have received national or international recognition. As a result, the petitioner has not established that this award qualifies under the plain language requirements of this criterion.

The petitioner has established that he is the recipient of one award that qualifies under this regulatory criterion. 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; 8 U.S.C. § 1153(b)(1)(A)(i). Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No.

06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*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).

Based on the foregoing evidence, the petitioner has not established that he 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 elements the petitioner must establish. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media.

The petitioner presents only an abstract of one article of which he is the author titled, [REDACTED], which appeared in [REDACTED]. The director determined that the petitioner failed to meet the requirements of this regulatory criterion. More specifically, the director determined the petitioner’s article failed to satisfy this criterion because “evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the petitioner’s publications have had a significant impact in their field.” On appeal, the petitioner asserts that this is a deviation from the plain language requirements of the regulation. The AAO agrees that the director based his determination on issues beyond the scope of the regulation. Although the AAO will withdraw the director’s specific finding as it relates to this single article, it will uphold the director’s ultimate determination regarding this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of “authorship of scholarly articles” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, at \* 12; *Snapnames.com Inc. v. Chertoff* at 10. As a result, even if the petitioner’s article met this criterion’s regulatory requirements of a scholarly article in a qualifying publication, which it does not, he would still fail to meet the plain language requirements of this criterion for only submitting one article. Thus, the petitioner has failed to establish that he meets the plain language requirements of this criterion.

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

The petitioner submits that he performed in a critical role for [REDACTED]. The director determined that the petitioner meets the plain language requirements of this criterion. The AAO withdraws the director's eligibility determination related to this criterion.

Although the petitioner provides evidence that he performed in a critical role for [REDACTED] and that this organization enjoys a distinguished reputation, he fails to identify performing in a leading or critical role for any other organization or establishment. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of performing "in a leading or critical role for organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, at \* 12; *Snapnames.com Inc. v. Chertoff* at \*10. As a result, although the petitioner has established he performed in a critical role for [REDACTED] which enjoys a distinguished reputation, he still fails to meet the plain language requirements of this criterion for only claiming a leading or critical role for one organization or establishment.

As a result, the petitioner has failed to establish that he meets the plain language requirements of this 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 submits his Form W-2 Wage and Tax Statements (W-2) from 2008 and 2009, and a salary survey for a software engineer in the Houston, Texas area reported on January 16, 2010. The director determined that the petitioner meets the plain language requirements of this criterion. The AAO withdraws the director's eligibility determination related to this criterion.

The petitioner's Forms W-2 indicate his monetary compensation for 2008 and 2009 was \$103,892.74 and \$104,773.30 respectively. According to the petitioner's resume, his position when he filed the petition was a Senior Software Engineer. The petitioner relies on a salary survey from the Economic Research Institute (ERI) relating to software engineers in his residential area. Not only is the survey geographically limited as it only reflects that a "software engineer" in the [REDACTED] compensation of \$92,242, but it also fails to provide information regarding the compensation of others within the petitioner's field of senior software engineers. This salary survey also states the following related to the methodology used to calculate this figure, "The summary data provided here is an estimation of the mean values reported by ERI's Salary Assessor database and may vary from the actual values reported by up to two percent." The mean value is an average of

“n” numbers computed by adding some function of the numbers and dividing by some function of “n”.<sup>3</sup> In simple terms, the mean value is the average of the spectrum of possible values (software engineer salaries).

This spectrum encompasses those with little or no experience to those with a high level of experience. An average salary established by ERI is not a proper basis for comparison. The petitioner must submit evidence showing that he has earned a *high* salary or other *significantly high* remuneration in relation to others in his field (senior software engineers), not simply a salary that is above the average level for software engineers or limited [REDACTED]. The petitioner’s attempt to use average local salary levels and to exclude the salaries of senior software engineers throughout his field does not allow for an appropriate basis for comparison in determining a high salary “in relation to others in the field.” *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus those of the top earners in the United States Professional Golfers’ Association Tour). The petitioner has failed to establish that his compensation is high relative to others in his field.

#### 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.

As noted above, the petitioner provides evidence that he is the recipient of one nationally recognized award for excellence in his field of endeavor, which is not sufficient to meet the regulatory requirements. However, he did establish that three projects in which he participated, received awards for excellence. Being the recipient of one qualifying award and taking part in projects that receive awards is not characteristic of being within that small percentage who have risen to the very top of their field of endeavor.

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<sup>3</sup> See <http://www.webster-dictionary.org/definition/mean%20value> [accessed on November 8, 2011 and incorporated in the record of proceeding.]

The petitioner has provided no evidence that his single article was aimed at computer software engineers. The petitioner submits evidence of the publication's intended audience through a January 19, 2010, web site printout of the International Data Group, a technology media company that owns the [REDACTED]. The evidence submitted reflects the target audience is both enterprise technology and consumer technology. However, a more specific audience description from this web site printout states, "Our readers include high-level government officials; operation, financial, technical, marketing and sales executives; senior technicians; and marketing and sales personnel." This evidence fails to establish that the intended audience is computer software engineers. More importantly, the petitioner's article appeared in this publication in 1994, however, he provides no evidence related to this publication from this time period. The petitioner asks that the AAO assume the publication's operations and intended audience have not changed over the last 17 years. The petitioner also fails to provide evidence that his article has received any attention from computer software engineers, despite the fact that a letter from [REDACTED] a senior member of the [REDACTED]

System (the system that the petitioner's article reported on) played a role in the computer industry in the 1990s. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the field's response to this article may be and will be considered in our final merits determination. Scholarly articles can be expected to have gained the attention of other experts in the petitioner's field who cite to his work lending his article some credence within the field and showing his field's reliance on the contents of his article. A single article, not written with other experts in the field as the audience, that fails to generate attention from other experts in the petitioner's field is not symbolic of sustained acclaim in the petitioner's field. It is also not emblematic of one who has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The petitioner established the critical role he performed for [REDACTED] on the [REDACTED] project, which after the petitioner's contributions, improved this product, and became one of [REDACTED]'s fastest growing product lines. While this is a noteworthy accomplishment, it is but one example of performing in a critical role for an organization. The petitioner's performance in a critical role is limited to a single organization and he has failed to provide evidence of the impact of his performance beyond the organization itself. Additionally, not every noteworthy accomplishment will serve to establish the petitioner's sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

Regarding the petitioner's salary, the evidence submitted shows the average local salary of software engineers. This is a geographically limited comparison of two fields of endeavor. It compares his salary to software engineers with various levels of experience; it does not compare the petitioner's salary to other senior software engineers throughout the United States, which is a more appropriate measure of his acclaim within his field of endeavor. See *Matter of Price*, 20 I&N Dec. at 954. Additionally, the petitioner must submit evidence showing that his salary places him among that small percentage at the very top of the field rather than simply in the top half on a different field on regional basis. See 8 C.F.R. § 204.5(h)(2). As a result, the evidence on record is not indicative of

sustained national or international acclaim or that the petitioner has attained the status as one of that small percentage who have risen to the very top of their field.

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 senior software engineer, relies on one qualifying award and awards issued to either projects in which he participated or to his employer, one article that he has not established is scholarly in nature which has failed to garner any recognition from experts within his field through citations in their own works, performing in a critical role for one organization, and that his salary is above average when compared with commonplace software engineers in an alternative field. While this may differentiate him from other senior software engineers, it does not indicate the petitioner's eligibility for the requested immigrant classification. Accordingly, it appears that the highest level of the petitioner's field is far 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 senior software engineer 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 promise, 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.