

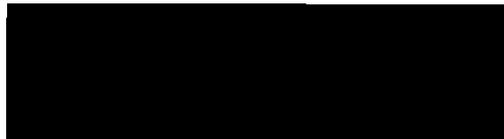
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B2

DATE: OFFICE: TEXAS SERVICE CENTER

JUL 17 2012



IN RE:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on August 9, 2011, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a research scientist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

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

In the director’s decision, she found that the petitioner established eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(3)(iv) and the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). However, the director determined that the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Moreover, the director indicated that the petitioner failed to submit any evidence relating to the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). On appeal, counsel only contests the director’s adverse decision regarding the original contributions criterion. Accordingly, the AAO considers the uncontested criteria to be abandoned and will not further discuss them on appeal. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

I. LAW

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

(1) Priority workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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).

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

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.

While the director determined that the petitioner established eligibility for this criterion, the AAO must withdraw the decision of the director for this criterion based upon a review of the record of proceeding. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought."

In the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the director indicated:

The evidence provided states that the petitioner has reviewed research grant applications, manuscripts and reviews for peers and colleagues for scientific journals such as *Cancer Immunological Review*, *Vaccine and Melanoma Research*, and *eCam* since 1999. However, there is no evidence to establish that the [petitioner] actually participated in the judging of the work of others.

In response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner did not address or submit any documentary evidence regarding her previous claims regarding reviewing research grant applications and manuscripts for scientific journals. Instead, the petitioner claimed:

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

[The petitioner] was invited to be Panelist and [REDACTED] Her role in the Advisory capacity was to assess papers for the Internal Medical Journal and Conferences. She was the nominated panel to select speakers from an array of [REDACTED] Further, she advised several participants, speakers and exhibitors on the [REDACTED]

The petitioner submitted documentary evidence reflecting that she served as a moderator for three topics at the GHHS, as well as promotional material for the summit. However, the summit occurred from April 1 – 3, 2011. The petition was filed on October 8, 2010. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. 884, 886 (BIA 1989) (citing *Matter of Atembe*, 19 I&N Dec. 427, 429 (BIA 1986); *Matter of Drigo*, 18 I&N Dec. 223, 224-225 (BIA 1982); *Matter of Bardouille*, 18 I&N Dec. 114, 116 (BIA 1981)). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977) emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977), which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Therefore, the petitioner's participation at the GHHS will not be considered to establish the petitioner's eligibility. The AAO notes that the petitioner failed to demonstrate that participating as a "moderator" equates to participating "as a judge of the work of others." The petitioner submitted no documentary evidence that reflected her responsibilities as a moderator, so as to demonstrate that she judged the work of others as opposed to simply presiding over a discussion or panel.

Furthermore, the petitioner failed to submit any documentary evidence to support her assertions claiming that she "assess[ed] papers for [REDACTED]" and selected [REDACTED] 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)). Moreover, the petitioner failed to demonstrate that "advis[ing] several participants,

speakers and exhibitors” equates to participating as a judge of the work of others consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

In addition, the petitioner claimed that she “presented” her work at several conferences. Although the petitioner submitted documentary evidence confirming her attendance and participation, simply presenting one’s work, as well as attending and participating, at conferences does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) that requires the petitioner’s “participation . . . as a judge of the work of others.” There is no evidence, for example, to establish that the petitioner judged the presentations of others at the conferences.

Finally, the petitioner claimed that she “attended and participated as [a] Panelist [REDACTED], on April 16-18th, 2010, [REDACTED].” The petitioner submitted two screenshots from [REDACTED] listing the petitioner on the board of advisors. However, the petitioner submitted no documentary evidence demonstrating that she was a panelist at the conference in April 2010, as well as her co-founding status of the society. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Further, the petitioner failed to submit any documentary evidence to establish that her role on the board of advisors involves judging the work of others.

For the reasons discussed above, the petitioner failed to demonstrate that she served as a judge of the work of others in the same or an allied field of specification for which classification is sought at the time of the filing of the petition consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO withdraws the decision of the director for this criterion.

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

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In response to the director’s request for additional evidence, the petitioner submitted a screenshot from www.ncbi.nlm.nih.gov reflecting that the petitioner’s article [REDACTED] with [REDACTED] was cited one time in another article. On appeal, the petitioner submitted a self-compiled list claiming that her work as been cited 30 times.

Specifically, the petitioner claimed that her first article, [REDACTED] with [REDACTED] with Therapeutic Cancer Vaccine” was cited 18 times and her second article, “Phase I Study of Ipilimumab, an Anti-CTLA-4 Monoclonal Antibody, in Patients with Relapsed and Refractory B-Cell Non-Hodgkin Lymphoma” (*Clinical Cancer Research*, 2009), was cited 12 times. Besides the previously mentioned screenshot from www.ncbi.nlm.nih.gov reflecting one citation, the petitioner failed to submit any documentary evidence supporting her assertions. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). It is noted that the petitioner claimed that 13 of the citations purportedly occurred in articles that were published in journals after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. at 886 (citing *Matter of Atembe*, 19 I&N Dec. at 429; *Matter of Drigo*, 18 I&N Dec. at 224-225; *Matter of Bardouille*, 18 I&N Dec. at 116). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249 regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing’s Tea House*, 16 I&N Dec. at 160 emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien’s eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *See Matter of Great Wall*, 16 I&N Dec. at 144-145, which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d at 261.

While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner’s eligibility for this criterion. Generally, the number of citations is reflective of the petitioner’s original findings and that the field has taken some interest to the petitioner’s work. However, it is not an automatic indicator that the petitioner’s work has been *of major significance in the field*. In this case, the petitioner only demonstrated that her work has been cited one time, and the AAO is not persuaded that such citation is reflective that the petitioner’s work has been of major significance in the field. Even the petitioner submitted documentary evidence establishing that her work was cited 17 times prior to the filing of the petition, which she clearly did not, such purported citations are not demonstrative of having been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence reflecting that her articles have been unusually influential, such as articles that discuss in-depth the petitioner’s findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner’s documentary evidence is not reflective of having a significant impact on the field. Merely submitting a document reflecting that the petitioner’s work has been cited one time is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner’s

work has been of a major significance in the field. The AAO is not persuaded that the minimal citation of the petitioner's article is reflective of the significance of her work in the field. The petitioner failed to establish how those findings of her work by others have significantly contributed to her field as a whole.

As discussed under the judging criterion, the petitioner submitted documentary evidence reflecting that she has presented her work and findings at a few scientific conferences such as the [REDACTED] in July 2002 and [REDACTED] Canada in April 2003. However, many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field.

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

Furthermore, the petitioner submitted several recommendation letters. In this case, the letters generally praise the petitioner for her work but fail to demonstrate that her contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance, [REDACTED] briefly discussed the petitioner's authorship of two articles. The regulations contain a separate criterion regarding authorship of scholarly articles pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi) that will be addressed later in this decision. The AAO will not presume that evidence relating to or even meeting the scholarly articles is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Moreover, the authors of the letters indicate other scientists who have modeled the petitioner's work in their own work. For example, [REDACTED] stated that "[the petitioner's] work propelled researchers [REDACTED] and [REDACTED] and their research team at the Cleveland Clinic Foundation to study the effects of the tumor derived GM2 gangliosides on the overall immune response," and [REDACTED] conducted a study based on [the petitioner's] model with positive results." Rather than submitting documentation from the researchers who conducted studies based on the petitioner's work, it appears that [REDACTED] offers his opinion based on reading their published work. While [REDACTED] describes the

significance of the other researchers' work, there is insufficient information to demonstrate that the petitioner's work has been widely influential, so as to establish original contributions of major significance in the field as a whole rather than limited to selective research studies.

Furthermore, the letters make reference to the petitioner's talents and abilities. For example, ██████████ stated that the petitioner's "diligence and skill, and meticulous attention to detail in all her work, her ability to think creatively, and to hone in on the right questions and ways to study them have provided excellent scientific research contributions." In addition, ██████████ stated that the petitioner "is truly an extraordinary researcher with unique skills and outstanding abilities." However, none of the letters indicated how the petitioner's skills or personal traits are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

The recommendation letters also speculate on the future impact that the petitioner's work may have on the field rather than how the petitioner's work has already been of major significance. For instance, ██████████ stated that the petitioner's "work *will* prove very beneficial to the health profile of the people of US, in years to come [emphasis added]." Further, ██████████ Chalukya stated that the petitioner's "ongoing and future work *will* have a national impact of great magnitude [emphasis added]." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings she has made have not been of major significance in the field. While the AAO acknowledges the originality of the petitioner's findings, as well as the fact that the field has taken some notice of her work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. at 886 (citing *Matter of Atembe*, 19 I&N Dec. at 429; *Matter of Drigo*, 18 I&N Dec. at 224-225; *Matter of Bardouille*, 18 I&N Dec. at 116). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249 regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. at 160 emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility

for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *See Matter of Great Wall*, 16 I&N Dec. at 144-145, which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d at 261. Many of the letters submitted do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from her work, rather than how her past research already qualifies as a contribution of major significance in the field.

While those familiar with the petitioner's work generally describe it as "extraordinary," "outstanding," and "important," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has

otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

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

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation to demonstrate that she authored two scholarly articles in professional publications. Therefore, the petitioner minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner established that she meets this criterion.

B. Summary

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

III. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.³ Rather, the proper conclusion is that the

³ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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

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

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

ORDER: The appeal is dismissed.