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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **MAY 09 2012** Office: NEBRASKA SERVICE CENTER



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, 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, 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 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.

The petitioner’s priority date established by the petition filing date is November 20, 2009. On March 5, 2010, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued her decision on July 26, 2010. On appeal, the petitioner submits a brief with a copy of a Ninth Circuit court 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. 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.*

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. Director's Decision Regarding *Kazarian* Analysis

Within the appellate brief, counsel claims that the director's decision violated the tenets of the *Kazarian* decision. Counsel summarized the body of his appellate brief by referencing the *Kazarian* tenet, which precludes USCIS from imposing novel standards beyond those enumerated within the regulation when applying the antecedent procedural step. Counsel further issued a conclusory statement that the petitioner met the following criteria:

- Receipt of lesser national or international prizes or awards for excellence in the field at 8 C.F.R. § 204.5(h)(3)(i);
- Membership in associations in the petitioner's field that require outstanding achievements of their members at 8 C.F.R. § 204.5(h)(3)(ii);
- Published material about the alien relating to his work in professional or major trade journals or other major media at 8 C.F.R. § 204.5(h)(3)(iii); and
- Participation as a judge of the work of others at 8 C.F.R. § 204.5(h)(3)(iv).

Counsel offered no discussion of these criteria within his appellate brief, nor did he identify a specific manner in which the director's decision contained an error in law or an error in fact relating to these criteria. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). A review of the record reveals no violation of *Kazarian* relating to 8 C.F.R. § 204.5(h)(3)(i), (ii) or (iii). However, the AAO notes an error relating to 8 C.F.R. § 204.5(h)(3)(iv), which it will discuss below under the judging criterion.

B. Eligibility as of the Date of Filing

Counsel's other major assertion on appeal is that USCIS should consider the response to the petitioner's article in *Cell Stem Cell* that itself did not appear in print until after the date of filing because the petitioner had already completed the research underlying that article prior to that date.

The petitioner must demonstrate his eligibility as of the filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In this matter, that means that he must demonstrate his acclaim as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Katigbak* provides:

If the petition is approved, he has established a priority date for visa number assignment as of the date that petition was filed. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

Section 204 of the Act requires the filing of a visa petition for classification under section 203(a)(3). The latter section states, in pertinent part: "Visas shall next be made available to *qualified immigrants who are members* of the professions." (Emphasis added.) It is clear that it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

Id. The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977). That decision reemphasizes the importance of not obtaining a priority date prior to being eligible based on future experience. In fact, this principle has been extended beyond the 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. *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977). That decision provides that a petition should not become approvable under a new set of facts. Recognizing that *Matter of Katigbak*, 14 I. & N. Dec. at 49 was not "foursquare with the instant case" in that it dealt with the beneficiary's eligibility, *Matter of Great Wall*, 16 I&N Dec. at 145 still applies the reasoning. The decision provides:

In sixth-preference visa petition proceedings the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met, as well as determine whether the alien meets the minimum requirements to perform the offered job satisfactorily. It follows that such consideration by the Service would necessarily be focused on the circumstances at the *time of filing* of the petition. The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.

Id. (Emphasis in original.) Finally, when evaluating revisions to a partnership agreement submitted in support of a petition seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, this office relied on *Matter of Katigbak*, 14 I. & N. Dec. at 49 for the proposition that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts." *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision further provides,

citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. 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).

Citations published after the date of filing cannot be considered evidence that the alien was already influential as of that date. Moreover, articles by the alien that were not published as of the date of filing and, thus, had not been disseminated in the field as of that date, cannot establish acclaim as of the date of filing. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that he will attain acclaim while the petition is pending.

C. Evidentiary Criteria²

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 several evidentiary elements the petitioner must satisfy. 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 be 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 rather than simply for participating in or contributing to the event. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided the Award for Excellence in Research on Alzheimer’s and Related Disorders from The Alzheimer’s Association of Northern California and Northern Nevada, one online news brief and one online news article relating to this award, and a document indicating that the petitioner was the recipient of a student scholarship in Japan. The director determined that the petitioner failed to meet the requirements of this criterion. Counsel has failed to specifically identify an error in law or error in fact within the director’s decision relating to this criterion.

Regarding the Alzheimer’s award, the petitioner provided two forms of media that acknowledged the award. The news brief originates from the online version of *Synapse*, the University of California, San Francisco (UCSF) student newspaper. The petitioner failed to provide any information relating to the circulation or the distribution data of *Synapse* and thus, the petitioner may not rely on this news brief to establish that this award is nationally or internationally recognized. The online news article originates from *Novato Advance*, a local community newspaper in the Marin County area in California. The record also lacks evidence demonstrating that *Novato Advance* is distributed or circulated beyond the local region in the state of California. Media coverage by local or regional newspapers is insufficient to

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

reflect the award is nationally or internationally recognized. In view of the foregoing, the petitioner may not rely on this award to satisfy the plain language requirements of this criterion.

The petitioner also submitted a combined foreign language and English language certificate of a Japanese Government scholarship indicating the petitioner received 175,000 Japanese Yen over a three year period. Academic study is not a field of endeavor; rather it is training for a future field of endeavor. As such, academic scholarships cannot be considered nationally or internationally recognized prizes or awards *in the petitioner's field of endeavor*. Moreover, financial aid awards in the form of scholarships are reserved for students in need of financial assistance to pay for tuition and not based on excellence in the field. Therefore, the petitioner failed to establish that his scholarship was a nationally or internationally recognized prize or award for excellence in the field. Moreover, the petitioner failed to submit any documentary evidence outside of the awarding entity to demonstrate that the scholarship was recognized nationally or internationally for excellence in the field of endeavor. Finally, while scholarships and other sources of competitive financial support may be noteworthy, they are not nationally or internationally recognized prizes or awards because only other students compete for such funding, not recognized experts in the field. The AAO cannot conclude that receiving funding for one's research and academic training constitutes receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to students seeking to further their research, training, and experience. Academic awards and honors received while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field. Therefore, this scholarship will not qualify to meet the plain language requirements of this criterion.

Consequently, the petitioner has not submitted evidence that meets 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 satisfy. First, the petitioner must demonstrate that he is a member of more than one association in his field. Second, the petitioner must demonstrate that the associations require outstanding achievements (in the plural) of their members. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided evidence of his membership in the Society for Neuroscience (SfN) and his membership in the American Association for the Advancement of Science (AAAS). Within the initial brief, counsel also lists additional memberships in associations, however the petitioner failed to document the record with this evidence. The director determined that the petitioner failed to meet the

requirements of this criterion. Counsel has failed to specifically identify an error in law or error in fact within the director's decision relating to this criterion.

Regarding the SfN, the criteria for new members are: (1) sponsorship by two regular or emeritus active members of the Society (this criterion also contains exceptions for underrepresented countries); (2) submission of a curriculum vitae and bibliography; and (3) student applications require proof of enrollment in a degree-granting institution of higher education. These criteria do not represent requirements of outstanding achievements in the field. Additionally, the petitioner failed to provide evidence that admittance is determined by nationally or internationally recognized experts in the field. Consequently, this association will not contribute to the petitioner satisfying the plain language requirements of this criterion.

Regarding the membership in AAAS, the petitioner provided an "About AAAS" website printout. However, this printout lacks any specific membership requirements. It merely indicates that membership is "[o]pen to all." This membership will not contribute to the petitioner satisfying the plain language requirements of this criterion. The initial filing brief also lists three additional organizations that the petitioner claimed membership within, however evidence of these memberships is not part of the record. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534 n.2; *Laureano*, 19 I&N Dec. at 3 n.2; *Ramirez-Sanchez*, 17 I&N Dec. at 506. The unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. See *Phinpathya*, 464 U.S. at 188-89 n.6. Consequently, the petitioner's claimed membership in these additional organizations will not factor into this proceeding.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The

petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Accompanying the initial petition filing, the petitioner provided various forms of media-related evidence from: *Science Daily*; *R&D Mag*; *EurekaAlert*; *FirstScience News*; *ScienceBlog*; *PR Leap*; *PsychCentral*; *Medical News Today*; and other unknown sources. In response to the RFE, the petitioner provided multiple new forms of evidence related to this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

Regarding the evidence submitted with the initial petition filing, the above named news sources contain 11 different pieces of evidence. However, several are the same news piece reprinted by different media outlets and are promotional press releases from Gladstone Institutes where the petitioner served his postdoctoral fellowship. The petitioner actually provided four different news pieces, some of which are press releases or an equivalent. Most notably, no form of evidence lists an author of the news piece and two pieces of evidence lack the material's publication date. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the evidence under this criterion include the date and the author of the published material. Without the author, and in two instances the date, the petitioner cannot comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Regarding the evidence submitted in response to the RFE, each form of evidence bears some form of evidentiary defect. Several of the articles postdate the petition filing date of November 20, 2009, and may not be relied upon within this proceeding. These articles appeared in *Alzheimer Research Forum*, *Health News Digest*, *Science Daily*, *Science Blog*, and *Genetic Engineering and Biology News*. Each of the referenced articles was published between December 3, 2009, and December 8, 2009. Therefore, these articles cannot demonstrate the petitioner's eligibility under the published material criterion within this petition. 8 C.F.R. § 103.2(b)(1), (12); see *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also provided evidence deriving from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.³ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

Based on the fact that the petitioner's evidence fails to comply with the regulation and that the remaining evidence postdates the petition filing date, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

³ Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, [accessed on April 24, 2012, a copy of which is incorporated into the record of proceeding.]

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.

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Within the director's decision, she acknowledges that the evidence on record demonstrates the petitioner has performed peer-review at his mentor's request. The director then concludes that because a journal did not request that the petitioner perform the reviews, that this is insufficient to meet the requirements of this regulatory criterion. The AAO does not concur with the director's determination as it relates to this criterion. As such the AAO withdraws the director's adverse determination and considers the petitioner to have met 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 plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) to his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided seven letters from experts within the petitioner's field identifying the possible future impact that the petitioner's contributions bear out. The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion for the reasons outlined below.

_____ where the petitioner served his postdoctoral fellowship, indicated that the petitioner's findings are "extremely promising and exciting." _____ also indicated: "[The petitioner's] studies have revealed a new way to prevent

and even reverse the abnormal accumulation of [damaging fibers] in the brain, *which could lead to the development* of better strategies to prevent and reverse AD [Alzheimer's disease]." (Emphasis added.) [REDACTED] also indicated that other areas of the petitioner's research "has shed new light on neural stem cells and AD and *could lay the groundwork* for treating AD with stem cells *in the future*." (Emphasis added.) [REDACTED] indicated that the petitioner's most prominent contributions will have a very important but future impact within the petitioner's field. That the petitioner will provide a prospective benefit to the United States as a permanent resident is a requirement under the Act. See section 203(b)(1)(A)(iii) of the Act. However, [REDACTED] did not identify how the petitioner had 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 beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. See *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] noted the petitioner's achievement relating to Parkinson's disease at Saitama University in Japan. However, [REDACTED] failed to explain in what manner the petitioner's findings have impacted the field as it relates to Parkinson's disease or any other disease. [REDACTED] claimed: "With his skills and dedication to the science, [the petitioner] has made significant contributions to our understanding of AD pathogenesis since he has come here." [REDACTED], like [REDACTED], indicated that the petitioner's findings relating to the damaging fibers that play a role in "AD-neuronal and cognitive deficits, [lay] *the foundation* for new therapeutic strategies." (Emphasis added.) [REDACTED] also attested that the petitioner's findings in other research "shed new light on the mechanistic insights into the development and integration of newborn neurons in AD brain, *which may lay the [ground work]* for AD treatment with stem cells." (Emphasis added.) The AAO is not disputing that the petitioner's research findings *may* eventually prove to be extremely beneficial to the field; however the impact of his findings has yet to materialize within his field. Speculation of future possible benefits, even from some of the top researchers in the field, continues to be theoretical and speculative.

Many of the remaining letters from those who were not the petitioner's present or former collaborators persuasively discuss the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See *Katigbak*, 14 I&N Dec. at 49. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's research and work as both trailblazing and of great potential, the fact remains that any measurable impact that results from the petitioner's research will occur in the future. These remaining letters extol the petitioner's talent and experience in various areas of research. Talent and experience in one's field, however, are not necessarily indicative of original research contributions of major significance in the petitioner's field. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. The reference letters submitted by the petitioner discuss his research findings, but they do not provide

specific examples of how the petitioner's work has already significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). [REDACTED], 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). While the expert letters in this case are not [REDACTED], it is apparent that each letter was solicited, as all reference the petitioner being qualified for the extraordinary ability immigrant classification. More importantly, the letters fail to "provide specific examples of how [the petitioner's] contributions influenced the field," as noted in *Kazarian* 580 F.3d at 1036.

In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, 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) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Soffici*, 22 I&N Dec. at 165. 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.

The director's RFE properly noted that the petitioner's most notable contribution is not one that is already of major significance. However, the director reversed her position after she received the response to the RFE. Within this response, counsel confirmed that the article titled [REDACTED] in an Animal Model of Alzheimer's Disease" was not published at the time that the petitioner filed the petition, but that *Cell Stem Cell* had published this article and featured it on the publication's cover in between the petition filing date and the date counsel responded to the RFE. A review of this publication reveals that *Cell Stem Cell* did feature the article on the cover. In response to the RFE, counsel asserted that since the petitioner had already submitted the article, and that the article was published and featured on the publication's cover as of the RFE response date, that the that petitioner had already completed the work

prior to the petition filing date and he only had to wait for the article to be published. Counsel also acknowledged that the article's recognition occurred after the petition filing date, but that *Cell Stem Cell* had previewed the article prior to publishing it. In fact the "preview" appeared after the date of filing in the same issue of *Cell Stem Cell* in which the petitioner's article appeared.

As discussed above, the petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Katigbak*, 14 I&N Dec. at 49. Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. at 175. At the time of filing, the petitioner had not established that the aforementioned article constitutes a contribution of major significance in the petitioner's field. The AAO is not persuaded by counsel's attempt to gloze the fact that the petitioner's work had not yet made an impact in his field, asserting that because the petitioner had completed the work on the article, that this satisfies the regulatory requirement as a contribution of major significance. Publications are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian*, 580 F.3d at 1030, *aff'd in part* 596 F.3d at 1122. The petitioner's findings cannot be considered a contribution of major significance unless, and until these findings have resulted in some impact in his field.

Regarding the petitioner's research, his field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. 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*, 51 F. 3d at 31. To be considered a contribution of major significance in the field of science, it can be expected that the results 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.

Within the RFE, the director noted, "[A]s you indicated, numerous citations of a finding by others is an indication in medical research that the finding is significant." The director then noted the small number of citations the petitioner's submitted article had garnered. This portion of the RFE was discussing the contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). In response, counsel cited the *Kazarian* decision. The court's language to which counsel refers discussed the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) relating to the scholarly articles criterion. The discussion states: "Nothing in [the scholarly articles criterion] requires a petitioner to demonstrate the research community's reaction to his published articles before those articles can be considered as evidence." Counsel subsequently alluded that the director would "break the law" if she were to consider "the NUMBER of citations as material to whether or not a certain evidentiary criteria was met." (Capitalization in the original.) Counsel's analysis is misplaced due to the fact that nothing in the *Kazarian* opinion suggests that USCIS may not consider the number of citations *under the contributions criterion*.

The record contains 24 articles published in scientific journals; six in the English language and 18 in Chinese. The record also contains evidence of multiple conference presentations. It remains the

petitioner's burden to document the actual impact of his articles. The regulation at 8 C.F.R. § 204.5(h)(3) contains a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If every provision of the regulation is to have meaning, USCIS must presume that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian*, 580 F.3d at 1036. In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

The record reflects that two of the petitioner's English language articles and two of his Chinese language articles had received a moderate amount of citations as of the date of filing. While the AAO takes into consideration the citations and ranking of the journals in which the petitioner's articles appear, it is not persuasive that the moderate citations of the petitioner's articles are reflective of the major significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field as required by this regulatory criterion.

In view of the foregoing, the AAO departs and withdraws the director's favorable determination that the evidence submitted satisfies 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.

The director determined the petitioner met the requirements of this criterion. The petitioner submitted evidence of serving as the author of 24 published scholarly articles. The AAO concurs with the director's eligibility determination related to this criterion.

D. Burden of Proof

Counsel also asserted that the basis of the director's adverse decision seemed to be that the petitioner did not claim under which criteria he qualified for the requested classification. However, a review of the director's decision reveals that the director was referencing the petitioner's response to the RFE rather than claiming that the petitioner failed to claim any criteria throughout the entire administrative process. The director's decision first references the March 5, 2010, RFE, then notes the petitioner's response to the RFE dated May 18, 2010. Subsequently, the director states, "In his response [to the RFE] the petitioner did not contend that he met any of the remaining eight criteria. USCIS again reviewed his initial evidence regarding the first four criteria [8 C.F.R. § 204.5(h)(3)(iv) – (v)], but it cannot find that the evidence establishes that the petitioner met any of these four (and he has made no contention of having met any of the last four criteria in the list [8 C.F.R. § 204.5(h)(3)(vii) – (x)]." The director's decision continues, discussing the individual criteria that the petitioner claimed within the initial petition filing brief. The director also addressed these criteria within her RFE.

Counsel subsequently stated, “Indeed, it is not up to the petitioner to claim criteria, and his not claiming them is not a reason for denial. The evidence was submitted, and the examiner should have decided on the basis of the law WHICH criteria [the] petitioner met.” (Capitalization in the original). Contrary to counsel’s contention, the burden of demonstrating eligibility lies with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. This burden also includes the petitioner’s responsibility of identifying under which criteria the director should consider his evidence. 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). The burden does not shift from the petitioner to the director after the petitioner provides evidence allegedly demonstrating his eligibility. If it is the petitioner’s contention that he meets a particular criterion, it remains his responsibility to specifically identify under which criterion USCIS should consider the evidence. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). He failed to provide such a statement or argument in this regard in response to the director’s RFE. The burden is on the petitioner to establish eligibility. It is not USCIS’s responsibility to infer or second-guess the intended criteria.

E. 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.

Had the petitioner 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.⁴ Rather, the proper conclusion is that the 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.

⁴ 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).