

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

[Redacted]

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DATE: **NOV 23 2012**

Office: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 11, 2012. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on February 8, 2012. The appeal will be dismissed.

According to part 5 of the petition, 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 petitioner lists his occupation as "Scientist and Engineering" and the proposed job title as "College/University Teacher." The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability in the field of endeavor.

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; 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)-(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 files a supporting letter and a number of supporting documents: (1) documents relating to the petitioner's membership in the American Society of Civil Engineers (ASCE), (2) a February 16, 2012 invitation from Aalto University in Finland, (3) online printouts from [REDACTED] (4) online printouts from Google Scholar, (5) a partial copy of a [REDACTED] article entitled [REDACTED] (6) a partial copy of a [REDACTED] 2011 article entitled [REDACTED] (7) a partial copy of a manuscript accepted for publication by the *Journal of Engineering Mechanics* on [REDACTED] 2011, entitled [REDACTED] (8) an online printout indicating that the petitioner has been serving as a reviewer for *Engineering Optimization*, and (9) a copy of the petitioner's employment authorization card. The petitioner asserts that he meets the membership in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the authorship of scholarly articles criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the

very top of the field and he has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). In addition, the petitioner has not shown his intent to continue working as a “Scientist and Engineer[]” in the United States. *See* section 203(b)(1)(A)(ii) of the Act. Accordingly, the AAO must dismiss the petitioner’s appeal.

## 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.

United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the

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.” *Kazarian*, 596 F.3d 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).” *Kazarian*, 596 F.3d 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 case, the AAO affirms the director’s finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

## II. ANALYSIS

### A. Translations of Foreign Language Documents

The record contains a number of foreign language documents, including online printouts from [REDACTED] purportedly relating to the petitioner’s scholarly articles and citations of these articles. The foreign language documents have not been translated pursuant to the requirements under the regulation at 8 C.F.R. 103.2(b)(3), which provides: “[a]ny 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.” Specifically, the “Translator’s Declaration[s]” fail to certify that the translator is “competent” to translate from the foreign language into English, or that the English language translations are “complete and accurate.” Accordingly, the AAO will not consider the foreign language documents in the record, as they have not been shown to be properly translated. See 8 C.F.R. 103.2(b)(3).

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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 (vi).

## B. Evidentiary Criteria<sup>2</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

*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.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that he meets this criterion based on his membership in the ASCE. As supporting evidence, he has provided: (1) an ASCE membership certificate dated December 2011, (2) a December 20, 2011 letter from [REDACTED] of ASCE, (3) an October 17, 2011 invoice, showing that the petitioner paid his membership dues, (4) email correspondence between the petitioner and ASCE relating to the petitioner's membership, (5) the petitioner's ASCE Member Advancement Reference Sheet, and (6) an online printout from ASCE's website, entitled "Advance Membership Guidelines."

The petitioner has not shown that he meets this criterion. The evidence shows that the petitioner's involvement with the ASCE occurred after he filed the petition on March 1, 2011. Specifically, the petitioner became an ASCE affiliate member in October 2011 and an ASCE full member on December 6, 2011. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As such, the petitioner may not show that he meets this criterion based on his involvement with the ASCE. As the petitioner has not challenged the director's finding as to the date of membership on appeal, the petitioner has abandoned this issue for failing to timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Alternatively, the petitioner has not provided sufficient supporting evidence to show that the ASCE either requires "outstanding achievements of [its] members" or that the "outstanding achievements [are] judged by recognized national or international experts in their disciplines or fields," as required under the plain language of the criterion. On appeal, the petitioner asserts that he advanced to full membership in two months based on strong letters from his references affirming his outstanding

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<sup>2</sup> The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

achievements. At issue under the plain language requirements of this criterion, however, are the association's requirements for membership.

According to a November 1, 2011 email from [REDACTED] "[i]n most cases, an applicant for admission or advancement to the full Membership grade must supply the names and address of three (3) ASCE Members who have personal knowledge of the applicant's work." The ASCE's Advance Membership Guidelines require a full membership applicant to document a degree and license or five years of qualifying experience and provide "a copy of a detailed resume and three references." The petitioner's ASCE Member Advancement Reference Sheet indicates that the petitioner's three references were three university professors who were also ASCE members. Neither the Member Advancement Reference Sheet nor any other evidence in the record indicates that the ASCE requires the petitioner to demonstrate "outstanding achievements" to become a member of ASCE. Education, licensure, experience and securing references are not outstanding achievements in the petitioner's profession.

The evidence also fails to show that the petitioner's three references were or had to be "recognized national or international experts in their disciplines or fields." The evidence similarly fails to show the members of the Membership Application Review Committee (MARC) that approved the petitioner's request to become a full member were "recognized national or international experts in their disciplines or fields."

Moreover, the plain language of the criterion requires the petitioner to present evidence of membership in qualifying associations, in the plural. This is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that the petitioner's membership in the ASCE constitutes membership in one qualifying association, the AAO would nonetheless conclude that the petitioner has not met this criterion, because the record lacks evidence of the petitioner's membership in a second qualifying association.

Accordingly, the petitioner has not presented documentation of his 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. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

*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. 8 C.F.R. § 204.5(h)(3)(iv).*

In his January 11, 2012 decision, the director concluded that the petitioner has met this criterion. The record contains evidence that the petitioner has served as a reviewer for [REDACTED]. Accordingly, the petitioner has presented evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of

specification for which classification is sought. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the petitioner asserts that he meets this criterion. As supporting evidence, the petitioner has provided: (1) a

article entitled (6) a document entitled petitioner's English and Chinese scholarly articles, (7) a document entitled listing the petitioner's English scholarly articles, (8) online printouts about *European Journal of Mechanics A/Solids*, *Finite Elements in Analysis and Design*, *Archive of Applied Mechanics*, *Journal of Mechanics*, *Journal of Engineering Mechanics*, and *Engineering Optimization*, (9) a November 15, 2011 letter from at the New Mexico Institute of Mining and Technology, (10) an undated letter from at the College of Civil and Architectural Engineering in Guangxi University, (11) an undated letter from a professor at an unspecified school, (12) an October 18, 2011 letter from Assistant Professor of Mechanical Engineering at Indiana University-Purdue University Indianapolis, (13) a December 2011 email reminder relating to a November 2011 invitation to contribute to a forthcoming book, (14) a December 8, 2011 email from an emeritus professor of an unspecified school, encouraging the petitioner to download the FEA code Strand7, and (15) a February 16, 2012 invitation from Aalto University.

First, the AAO will not consider any evidence relating to the petitioner's scholarly articles, work or achievements that occurred after he filed the petition on March 1, 2011. As discussed, it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, the petitioner may not show that he meets this criterion based on activities that postdate the filing of the petition.

Second, the petitioner has shown evidence of original contributions as a scientist and engineer insofar as his work does not simply duplicate the work of other engineers. Specifically, according to

[The petitioner] has developed several novel structural design methods which can improve the performance of building structures and automotive structures in vibration environment. He has developed advanced sensitivity analysis methods for structures under the dynamics loading of earthquake, wind (hurricane and tornado) and wave. These advanced sensitivity analysis methods remarkably enhance the efficiency of optimization algorithm of structures in vibration environment. He creatively developed a second order method – [REDACTED] Method for optimization design of structures subject to transient loads. His method and computer program are proved to be more efficient than the zero and first order methods. He also developed a novel second-order optimization method to decrease the design cost, at the same time to increase the safety of structures in earthquake, wind (hurricane and tornado) and vibration environment.

According to Professor [REDACTED] the petitioner “is the first scientist to develop two highly efficient methods to calculate the first and second-order sensitivity of structural dynamic response. He is the first scientist to propose a [REDACTED] Method to solve successfully the optimization problem of structures subjected to earthquake.” Similarly, [REDACTED] stated that the petitioner “has developed many structural optimization methods for engineering structures. His famous contributions in [the] international community are the second order optimization method for the engineering structures subjected to dynamic loads and several sensitivity analysis methods.” As such, the petitioner’s evidence, including his reference letters and the publication of his scholarly articles, establishes that he has made original contributions in his field.

Third, while the petitioner’s research is novel, he has not shown that he has also made contributions of major significance in the field as a whole. As quoted above, [REDACTED] stated that the petitioner’s “analysis methods remarkably enhanced the efficiency of optimization algorithm of structures in vibration environment” and his “method and computer program are prove[n] to be more efficient than the zero and first order methods.” Although [REDACTED] asserted in his letter that the petitioner’s work has had some impact in the field, neither his letter nor any other evidence in the record shows that the impact was so significant that it constitutes contributions of major significance in the field. Notably, [REDACTED] does not identify independent researchers relying on the petitioner’s work.

Similarly, although [REDACTED] letter states that “[d]ue to [the petitioner’s] expertise in computational skills, [REDACTED] had] invited [the petitioner] to serve as a consultant in [his] research project,” the letter fails to demonstrate that the petitioner’s work constitutes contributions of major significance in the field, such that it has already significantly impacted or advanced the field. Notably, [REDACTED] acknowledges that he has known the petitioner since they were undergraduate students together.

According to [REDACTED] letter, “[the petitioner’s] outstanding contributions in structural optimization field *will* improve structural design methods and make the engineering structures safer, more reliable and economic.” (Emphasis added.) [REDACTED] letter speculates as to the future impact and significance of the petitioner’s work, but it is not indicative of the petitioner’s work already constituting “contributions of major significance in the field.” as required under the plain language of the criterion.

Moreover, the Board of Immigration Appeals (the Board) 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 has also held, however, “[w]e 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). 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).<sup>3</sup> The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int’l*, 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 *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The reference letters in the record primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and 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. See *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*, No. 95 Civ. 10729, 1997 WL 188942 at \*5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990). The petitioner has also failed to submit

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<sup>3</sup> 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” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Fourth, the petitioner's publication record is not indicative of contributions of major significance in the field. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.<sup>4</sup> Although the petitioner has provided documents purportedly showing that his scholarly articles have been cited by other scientists, as discussed, the AAO will not consider these documents, as they have not been properly translated pursuant to the regulation at 8 C.F.R. 103.2(b)(3). Similarly, the impact factor (IF) or information relating to the publications that published the petitioner's scholarly articles, as noted in the petitioner's response to the director's Request for Evidence (RFE), is insufficient to show that the petitioner's work constitutes contributions of major significance in the field. Specifically, the IF and information relates to the publications, not the petitioner's individual articles. The petitioner has not shown that the impact and significance of a publication is the same as the impact and significance of each and every article published in the publication.

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

In his January 11, 2011 decision, the director concluded that the petitioner has met this criterion based on the petitioner's scholarly articles published before his filing of the petition on March 1, 2011. The record contains evidence that in 2009, the petitioner published scholarly articles in the

Accordingly, the petitioner has presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

### C. Intent to Continue Work in the Area of Expertise

While the exclusive classification the petitioner seeks does not require a job offer, it is an employment-based classification that requires that the alien seek to enter the United States to continue working in his area of expertise. *See* Section 203(b)(1)(A)(ii) of the Act. It is "by virtue of

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<sup>4</sup> Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

such work” that aliens under this classification will substantially benefit prospectively the United States as envisioned under section 203(b)(1)(A)(iii) of the Act. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Congress did not intend for aliens of extraordinary ability to immigrate to the United States and remain idle. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

In support of his petition, the petitioner has provided a September 22, 2010 letter from the University of Nebraska Lincoln, indicating that the petitioner was a Postdoctoral Research Associate from [REDACTED] to [REDACTED]. In his letter filed in response to the director’s RFE, the petitioner confirmed that his employment with the University of Nebraska Lincoln had ended in August 2011, and that as of December 2011, he was “searching [for] more suitable positions that require [his] extraordinary ability in the United States.” On appeal, the petitioner states that he “missed the opportunity to work in [u]niversities in August and September 2011,” because he did not have an employment authorization card. He further asserts that “this petition [] is not based on employment.”

Based on the evidence in the record, the petitioner has not shown his intent to continue working as a “College/University Teacher” in the United States. See section 203(b)(1)(A)(ii) of the Act. As noted, while the petitioner need not present a job offer, the exclusive classification he seeks is an employment-based classification that requires the petitioner to seek to enter the United States to continue working in his field. See Section 203(b)(1)(A)(ii) of the Act. The record lacks any evidence showing that the petitioner has worked in his field after August 2011. The record also lacks sufficient evidence showing that the petitioner has been seeking employment in his field or has any potential employment prospects in his field after August 2011. His statements do not sufficiently detail plans on how he intends to work in the United States as required under 8 C.F.R. § 204.5(h)(5). On appeal, the petitioner has provided a document from Aalto University, inviting him to become a Postdoctoral Research Associate. This position, however, is in Finland, not the United States.

Accordingly, the AAO affirms the director’s finding that the petitioner has not shown his intent to continue working as a “College/University Teacher” in the United States. See subsections (ii) and (iii) of section 203(b)(1)(A) of the Act.

### 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 have 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 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.<sup>5</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

In addition, the petitioner has not shown his intent to continue working as a “College/University Teacher” in the United States, as required under section 203(b)(1)(A)(ii) of the Act.

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.

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<sup>5</sup> The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 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* INA §§ 103(a)(1), 204(b); 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).