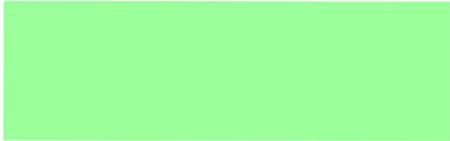




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

APR 17 2013

OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE:

Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on October 22, 2012 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 an urban planner. 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, he found that the petitioner established eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(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 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), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Moreover, the director indicated that the petitioner failed to claim eligibility or submit any evidence relating to 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), and the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). In counsel’s brief on appeal, counsel did not contest the findings of the director or offer additional arguments for the published material criterion and the artistic display criterion. The AAO, therefore, considers these issues to be abandoned. *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.

The director determined that the petitioner established eligibility for this criterion. 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." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation to demonstrate that he minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner established that he meets this criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. 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 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).

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

The petitioner claimed eligibility for this criterion based on his work with [REDACTED], [REDACTED], and [REDACTED]. Regarding [REDACTED] the petitioner submitted documentary evidence reflecting that the [REDACTED] is promoting the implementation of the approach in such countries as [REDACTED] and [REDACTED]. Furthermore, the petitioner submitted evidence of some press and media coverage in the focused countries, as well as evidence of some presentations by the petitioner at conferences and workshops. In addition, the petitioner submitted a letter from [REDACTED] who indicated that he assigned [REDACTED] as a reading assignment at a [REDACTED] course in 2011, and the petitioner submitted a letter from [REDACTED] who indicated that [REDACTED] will be taught in a course at [REDACTED]. The petitioner also submitted other recommendation and reference letters that highly praised the program.

Although the petitioner demonstrated that [REDACTED] has begun to be implemented in the field via his employer, the [REDACTED] the petitioner failed to establish that it has been of major significance. Simply showing that an original contribution is being or has been applied in the field does not necessarily demonstrate eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(v) unless the petitioner establishes that it has been of major significance. In this case, the petitioner failed to establish the impact that [REDACTED] has had on the field, so as to reflect that it has been of major significance.

For example, [REDACTED] indicated that he worked with the petitioner on [REDACTED] that included the planning of a new city in the suburbs of [REDACTED]. [REDACTED] failed to elaborate on the results of the project such as whether [REDACTED] successfully affected the project. Moreover, while [REDACTED] indicated that [REDACTED] is influencing the design and implementation of two large projects in [REDACTED] the final results of [REDACTED] application has not been established or even concluded, so as to reflect that it has been of major significance. Even [REDACTED] described the [REDACTED] projects as "interesting" but since it was only released in April 2012, three months prior to the filing of the petition, the outcome has yet to be determined. Similarly, the petitioner submitted a proposed loan for \$400 million to [REDACTED] for a metropolitan and urban development project. Although the loan proposal indicates that [REDACTED] will be utilized in the development of the project, the actual project is still in the planning stages, and any measurable impact may or may not occur in the future. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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 (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.

The AAO does not dispute that the [REDACTED] has begun to utilize and promote [REDACTED]. Merely establishing that it has only been introduced in selective programs by a single source, the [REDACTED] without reflecting the full impact on the field is insufficient to demonstrate an original

contribution of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, counsel claims:

[E]vidence was included that demonstrated that [REDACTED] has been used as one of the main focuses of a graduate course at [REDACTED] . . . , and is also the subject of a course at [REDACTED] (and is being adapted for urban planning curricula of a network of leading universities in [REDACTED] by 2013). . . . See *Kazarian v. USCIS*, supra at 1118 (indicating that petitioner's textbook being required reading in many secondary schools, colleges and universities throughout the country could constitute an original contribution, however, petitioner presented no evidence that the book was actually used in any class.)

The Ninth Circuit did not find in its *Kazarian* decision that the appellant's textbook could constitute an original contribution of major significance in the field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v). Rather, the Ninth Circuit was summarizing the factual and procedural background and indicated that the appellant had submitted a letter from a colleague that claimed that the appellant's textbook could be used as required reading. *Kazarian v. USCIS*, 596 F.3d at 1118. Nevertheless, as discussed earlier, the petitioner submitted a letter from [REDACTED] who indicated that he assigned [REDACTED] as a reading assignment in his course at [REDACTED] in 2011. The submission of evidence reflecting that the petitioner's work has been assigned for a course at one university is not persuasive evidence of an original contribution of major significance in the field as opposed to assigned reading or devoted courses at many universities and colleges. Further, although [REDACTED] indicated that [REDACTED] will be taught in a course at [REDACTED] eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, while [REDACTED] may be taught at two universities, it does not rise to the level of major significance consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding the [REDACTED], the petitioner submitted a few reference letters that briefly discussed the petitioner's work on the project but failed to demonstrate that it has been of major significance in the field. The letters made general statements without providing specific information to reflect an original contribution of major significance in the field. For instance, [REDACTED] indicated that it "inform[ed] policy makers and practitioners throughout the world of the complex nature of issues and examples of practical, innovative options for addressing them." [REDACTED] failed to provide any examples of the policy makers and practitioners and how they applied the sourcebook throughout the field, so as to reflect the significance of the sourcebook. Similarly, [REDACTED] indicated that the sourcebook was "interesting" and "important," he did not elaborate on the effect it has had on the field, so as to reflect that it has been of major significance.

Moreover, [REDACTED] simply mentioned that the petitioner co-authored the sourcebook without providing any impact or influence it has had on the field. Furthermore, [REDACTED] indicated that the sourcebook “was developed in a user friendly multi-media format” and “[t]his was a first for the [REDACTED]”. Although this demonstrates the originality of the petitioner’s contribution, it is limited to the [REDACTED] and is not reflective of an original contribution of major significance to the field as a whole.

Regarding [REDACTED] in the petitioner’s statement 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 claimed that he was currently developing [REDACTED] a new software platform. The petitioner discussed his plans for [REDACTED] and the potential impact it will have such as “[it] will include outputs in the form of graphs, maps, tables, and global comparisons [emphasis added],” “[it] will be systematically incorporated into a larger body of information [emphasis added],” and “it will not cost anything, and it will be easily accessible [emphasis added].” Further, the petitioner submitted a letter from [REDACTED] who claimed that [REDACTED] “will use customized functions [emphasis added],” “will produce standard city profiles [emphasis added],” and “will draw on the various layers of data [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 [REDACTED] while original, is still in development and is not currently being implemented in his field. Eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. The assertions that [REDACTED] is likely to be influential is not adequate to establish that his work is already recognized as a major contribution in the field. The fact remains that any measurable impact that results from [REDACTED] will likely occur in the future.

Moreover, in the director’s decision, he stated that “a printout from the search engine Google Scholar establishes your Sourcebook was cited on only two occasions.” On appeal, counsel claims that “[s]uch printout was not submitted by [the petitioner] and was apparently obtained by the District Director [sic] on his own accord.” On the contrary, a review of the record of proceeding reflects that the petitioner submitted the printout in support of the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), and counsel listed the printout as Exhibit “q” at the initial filing of the petition. Moreover, the AAO finds that the citations to the petitioner’s work are both relevant and appropriate to be considered under the original contributions 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, according to the screenshot from *Google Scholar*, the [REDACTED] was cited 2 times, [REDACTED] was cited 21 times, and the petitioner’s total work was cited 30 times. The AAO is not persuaded that such

citations are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that his work has been unusually influential, that discuss in-depth the petitioner's findings, or that 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 documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of major significance in the field. The AAO is not persuaded that the moderate citations of the petitioner's work are reflective of the significance of his work in the field.

The petitioner's evidence includes documentation that he has presented his work at various conferences supported or sponsored by the [REDACTED] along with numerous other participants. 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 others or have otherwise significantly impacted the field. While the presentation of the petitioner's work demonstrates that the petitioner's work was shared with others and may be acknowledged as original contributions based on the selection of it to be presented, the AAO is not persuaded that presentations of the petitioner's work as part of the petitioner's job at the [REDACTED] is 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.

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 solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are not persuasive evidence that the petitioner has made original contributions of major significance in the field. *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 contributions.

(b)(6)

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 (Comm'r 1988). USCIS is, however, 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 his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion.

Accordingly, the petitioner failed to establish that he 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 director determined in his decision that the petitioner "authored or co-authored at least four professional publications that have been officially published and cited by others in their [] articles." As such, the director found that the petitioner established eligibility for this criterion. Based upon a review of the record of proceeding, the AAO must withdraw the decision of the director for this criterion.

At the initial filing of the petition, counsel claimed in her cover letter:

[The petitioner] has published over four highly regarded *books*. . . . All of his work has been published by the [redacted] and has been distributed widely to high-level government officials, donor agencies, investment firms and academics.

(Emphasis added.)

Counsel claimed the petitioner's eligibility for this criterion based on the following books:

1. [redacted]
2. [redacted]

3. [REDACTED] and
4. [REDACTED]

As 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 [emphasis added],” the submission of *books* do not equate to articles. An article is “a nonfictional prose composition usually forming an independent part of a publication (as a magazine).”³ On the other hand, a book is “a long written or printed literary composition.”⁴ Furthermore, the regulation requires that the articles be “in professional or major trade publications or other major media.” Mere publication does not establish that a book or manual is a professional or major trade publication or other major media. Furthermore, while counsel emphasized in her cover letter that the books were published *by* the [REDACTED], one of the determining factors to meet the eligibility requirements for this criterion is whether the scholarly articles were published *in* professional or major trade publications or other major media. As the [REDACTED] is an organization, as opposed to a professional or major publication or other major medium, documents published by the [REDACTED] do not meet the plain language of this regulatory criterion.

In addition, counsel claimed in her cover letter that the petitioner “has two more books set for publication that are currently in draft form.” Eligibility must be established at the time of filing the petition. Therefore, the AAO will not consider these items as evidence to establish the petitioner’s eligibility. (8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Regardless, for the reasons discussed above, the publication of books or manuals by the [REDACTED] do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

As such, the AAO withdraws the decision of the director for this criterion. The petitioner failed to establish that he meets the plain language of the regulation for this criterion.

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

In the director’s decision, he determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the

³ See <http://www.merriam-webster.com/dictionary/article>, accessed on April 16, 2013, and incorporated into the record of proceeding.

⁴ See <http://www.merriam-webster.com/dictionary/book?show=0&t=1311785044>, accessed on April 16, 2013, and incorporated into the record of proceeding.

role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

The record of proceeding contains several reference and recommendation letters that claim that the petitioner performed in a leading and/or critical role for the [REDACTED]. However, 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. at 1108, *aff'd*, 905 F.2d at 41; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. A review of the letters do not contain sufficient evidence to demonstrate that the petitioner's role was leading or critical consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). For example, [REDACTED] stated that the petitioner "took a leading role in helping to conceptualize and prepare a key piece of analytical work in [REDACTED] on urbanization." Compared to the [REDACTED] as a whole, [REDACTED] simply indicated the petitioner's role on a specific but limited project. Similarly, [REDACTED] and [REDACTED] discussed the petitioner's work with [REDACTED] and the East Asia region but failed to establish the petitioner's role was leading or critical. Again, [REDACTED] mentioned that he appointed the petitioner as a co-team leader of the [REDACTED] project but failed to demonstrate how the petitioner's role impacted or influenced the [REDACTED] as whole, so as to reflect a leading or critical role. Furthermore, although the petitioner's contributions to the [REDACTED] project is relevant to the original contributions criterion that has already been discussed, the plain language of this criterion requires the petitioner to establish that his role was leading or critical to a distinguished organization or establishment rather than the contributions he has made to the field. On appeal, the petitioner submitted a letter from [REDACTED] that discussed the petitioner's recruitment and qualifications for his eventual job at the [REDACTED] rather than the role the petitioner had after he was employed there and whether it was leading or critical.

The petitioner failed to submit, for example, documentary evidence comparing his role to other employees at the [REDACTED] that would indicate that his role was leading or critical. According to the organizational chart of the [REDACTED] it appears that the petitioner is in a far subordinate role than [REDACTED] President of the [REDACTED] as well as any of the other numerous employees listed on the organizational chart.⁵ Although the petitioner's reference letters praised him for his personal and professional traits, they do not reflect that the petitioner has performed in a leading or critical role for the [REDACTED] pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

The petitioner also claims eligibility for this criterion based on his role with Cities Alliance. The petitioner submitted a letter from [REDACTED] who generally claimed that the petitioner performed in a critical or leading role. [REDACTED] letter focused on the [REDACTED] rather than the petitioner's role with [REDACTED]. In fact, [REDACTED] did not even indicate the petitioner's position rather than indicating that the petitioner worked on a joint [REDACTED] and [REDACTED] initiative and reported directly to him as his supervisor. The petitioner failed to submit any

⁵ See <http://siteresources.worldbank.org/EXTABOUTUS/Resources/bank.pdf>. Accessed on April 16, 2013, and incorporated into the record of proceeding.

evidence distinguishing his role from the other employees at [REDACTED] so as to demonstrate that his role was leading or critical. Indeed, it appears that the petitioner performed in a far lesser role than [REDACTED], Manager of [REDACTED]. The petitioner failed to demonstrate that he performed in a leading or critical role for Cities Alliance consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

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

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

The director determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” As evidence of the petitioner’s salary, the petitioner submitted a “Verification of Employment” from [REDACTED] Sector Manager of the [REDACTED] who indicated that the petitioner’s estimated annual gross income was \$134,740. In addition, the petitioner submitted an unidentified document regarding an additional mobility premium of \$15,532.

The petitioner failed to submit primary evidence, such as paystubs or income tax documentation, of his salary at the [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, while the petitioner submitted an employment verification letter, the petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, [REDACTED] letter is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant’s identity, administered the requisite oath or affirmation. *See Black’s Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signer, in signing the statement, certifies the truth of the statement, under penalty of perjury. 28 U.S.C. § 1746. Moreover, the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires more than one affidavit, and the petitioner submitted only one letter:

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to establish that he “has commanded a high salary.” In other words, the petitioner must demonstrate that he has earned a high salary rather than speculating on his potential earnings. In this case, the employment verification letter indicates only an estimated annual gross salary without reflecting his actual earnings. Therefore, the petitioner failed to establish his actual salary at the [REDACTED]

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” For the reasons discussed, the petitioner failed to submit sufficient documentary evidence establishing the amount of his salary, so as to establish that he has commanded a high salary consistent with the plain language of this regulatory criterion.

Accordingly, the petitioner failed to establish that he 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.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

⁶ 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).

(b)(6)

Page 14

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.