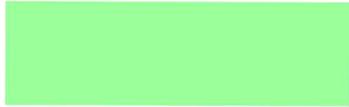




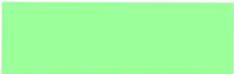
**U.S. Citizenship
and Immigration
Services**

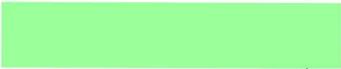
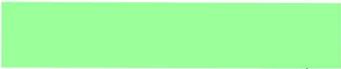
(b)(6)



DATE: **FEB 08 2013**

Office: NEBRASKA 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:

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, 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 February 15, 2012. On February 21, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on May 15, 2012. On appeal, the petitioner submits a statement with no additional documentary evidence. 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).

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II. ANALYSIS

A. One-Time Achievement

The petitioner previously claimed eligibility based upon a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3) before the director, but does not contest the director's adverse findings under this provision or offer additional arguments on appeal. The AAO, therefore, considers this issue to be abandoned. *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). Accordingly, the petitioner has not submitted qualifying evidence of a one-time achievement.

B. 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 is 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 the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided several awards as a member of a team, [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion. The director's determination, as stated in his decision, was solely based on the fact that "the petitioner has not received any awards or prizes individually. The above listed prizes or awards were given to the petitioner's group." The AAO departs from the director's basis of determining the petitioner's eligibility to qualify under this criterion.

Even though the petitioner was not the sole recipient of the submitted awards, he participated in a group project that entered a team-oriented competition. The record contains certificates of participation issued to the petitioner individually as a member of the team and awards from the same event issued to the team. Thus, the petitioner may properly be considered the recipient of those prizes. The awards from the Iran Open events are issued specifically to the petitioner, also naming his team. As such, based on the specific facts of this case, the AAO withdraws the director's concerns that the petitioner was not the recipient of the awards.

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

Regarding the regulatory requirement that the prizes or awards be nationally or internationally recognized, the petitioner did not offer any additional information on appeal. Within the initial proceedings, the petitioner supported this claim with periodical or newspaper articles from [REDACTED]

[REDACTED] That a periodical or newspaper provided coverage of a particular prize or award is insufficient to demonstrate the accolade is nationally or internationally recognized. The petitioner must also provide evidence to establish that the periodical or newspaper has a national or international reach, as media coverage by local or regional newspapers is insufficient to reflect that an award is nationally or internationally recognized. The only media for which the petitioner provided evidence of the circulation or distribution data are the [REDACTED], the [REDACTED]. The evidence relating to each of these journals and newspapers is in the form of a letter from the publication itself rather than published circulation statistics from an official or independent website or other publicly available source. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 F. App'x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Moreover, [REDACTED], a responsible manager at [REDACTED] claims that the newspaper has the "highest readers in the country with 200,000 circulation and 250,000 online visitors." The Manager of the [REDACTED], however, claims that [REDACTED] "is addressed to more than 1,000,000 applicants of Iranian universities," more than twice as many copies as the print and online readership of what is purportedly the paper with the highest readership. In addition, the Editor-in-Chief of the [REDACTED] claims the journal enjoys a circulation of 450,000, a higher circulation than [REDACTED], purportedly the newspaper with the "highest readers."

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The petitioner has not resolved the inconsistencies in circulation and readership claims.

Based on the above shortcomings, none of the prizes or awards on record serve to satisfy this criterion. As such, 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 both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the

achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner's field, who represent the association, render this determination. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The evidence relating to this criterion is primarily the same evidence on which the petitioner relies to satisfy the judging criterion. There is no presumption that evidence directly relating to one criterion must also meet another, less relevant criterion. To hold otherwise would undermine the statutory requirement for extensive evidence and the regulatory requirement that a petitioner submit evidence that satisfies three separate criteria. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3).

The petitioner initially documented membership on the "[redacted]" at [redacted] and membership on the technical committee of both the [redacted]. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, the petitioner relies on a letter from [redacted] Dr. [redacted] also served as the Technical Chair of the [redacted] at the university. Within the letter, Dr. [redacted] stated:

The members of Technical Committee were selected according to their long term experience and superior knowledge in each field. Mr. [redacted] was selected as a member of [the] Technical Committee of [redacted] due to his major significant contributions in the field of robotics. He has won several awards in International robotic competitions. Therefore he was a qualified candidates [sic] for this position.

First, a technical committee is not an "association." Thus, membership on a committee cannot serve to satisfy this criterion. Moreover, Dr. [redacted] did not describe the selection process to establish whether the committee utilized nationally or internationally recognized experts to judge the achievements of all prospective members to determine if the prospective members' achievements were outstanding. As such, this committee will not serve to satisfy this criterion's requirements. Furthermore, Dr. [redacted] stated that the petitioner was selected as a committee member due to his contributions in the field; however, the professor did not indicate that the committee required outstanding achievements of *all* its committee members, or simply whether the petitioner was selected because of his achievements. The focus of this regulation is on the association's selection criteria for all of its members, not the basis of the invitation to the petitioner. Thus, this committee membership cannot satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner also references a letter from "Dr. [redacted] President of [redacted] [redacted] regarding his membership on the technical committee of [redacted] The letter,

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however, addresses the petitioner's judging experience rather than his committee membership. The petitioner also provided a letter from [REDACTED] Managing Director of [REDACTED] [REDACTED] who is also a member of the [REDACTED] Mr. [REDACTED] mentioned the petitioner's efforts in competitions in 2010 and 2011, and stated: "[The petitioner] also has been in the panel of judges of [REDACTED] since 2010 mainly because his academic and professional background makes him very exceptional for holding this position." Mr. [REDACTED] letter failed to outline the requirements to be considered for the technical committee of [REDACTED]. Regardless, as stated above, a committee is not an "association." As such, this evidence will not serve to satisfy this criterion's requirements.

In reference to the [REDACTED], on appeal the petitioner only asserts that he received a certificate of membership relating to this competition. The evidence on record reflects that the petitioner was a member of the technical committee as an organizer and a judge of the [REDACTED]. The petitioner failed to provide evidence to demonstrate that this entity utilized nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements were outstanding. He also failed to submit evidence to establish that the associations use this outstanding determination as a condition of eligibility for prospective membership. Finally, once again, a committee is not an association. Consequently, this "membership" will not assist the petitioner in meeting the plain language requirements of this criterion.

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 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.

The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's favorable eligibility determination related to this criterion for the reasons outlined below. The petitioner provided much of the same evidence he relied upon in an attempt to demonstrate his prizes or awards were nationally or internationally recognized, discussed above. As noted under the

awards criterion, the circulation or distribution data relating to the [REDACTED] and [REDACTED] was insufficient to demonstrate the reach of each publication. Specifically, the petitioner submitted self-serving letters from each of these publications which are inconsistent as to which publication has a higher readership. USCIS need to rely upon such evidence. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 F. App'x 680 (9th Cir. 2009). Even if USCIS accepted the circulation data in the letters, the petitioner did not provide the circulation statistics of similar Iranian publications for comparison purposes. Thus, he has consequently failed to establish the any of these are a form of major media. See *Noroozi v. Napolitano*, 11 CIV. 8333 PAE, 2012 WL 5510934 *9 (S.D.N.Y. Nov. 14, 2012). The petitioner also provided no information related to the distribution data of these publications to establish this published material has a national rather than a regional reach within Iran. Publications with only a regional reach are not considered to be major media and the petitioner has not established this publication is a professional or major trade publication in the alternative.

The remaining published material on record relates to the following publications: [REDACTED] and the [REDACTED]. The petitioner failed to provide any evidence regarding the circulation or distribution statistics of the [REDACTED] or the [REDACTED]. He is therefore precluded from demonstrating that either of these publications constitutes a form of major media.

Finally, the translations do not comply with pertinent regulations. A review of the record reveals that none of the translated evidence under this criterion contains the author of the published material as required by 8 C.F.R. § 204.5(h)(3)(iii). Therefore, each form of evidence submitted under this criterion is insufficient to satisfy all of the requirements under the regulation. In addition, many of the translations of articles the petitioner provided are excerpts rather than the entire published piece. An excerpt out of context does not allow a determination as to whether the published material is, in fact, about the petitioner. As the regulation at 8 C.F.R. § 103.2(b)(3) requires the petitioner to ensure that any foreign language document was "accompanied by a full English language translation," all articles translated as excerpts are not probative evidence.

In view of the foregoing, the AAO withdraws the director's favorable determination as it relates to this criterion. The petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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.

The director determined that the petitioner failed to meet the requirements of this criterion due to the fact that he judged students, who are not in the field of specialization as required by the regulation. The AAO departs from the director's adverse determination as it relates to this criterion. The record contains sufficient evidence that the petitioner judged the work of others specializing in robotics, his field of expertise. Thus, the petitioner has satisfied 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) in 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 letters and evidence of the implementation of his work through contracts. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, the petitioner failed to describe an error in law or error in fact attributable to the director. The petitioner reiterated his belief that the expert letters and contracts sufficiently demonstrate his eligibility under this criterion.

[REDACTED] a professor with the Department of Mechanical Engineering at [REDACTED] [REDACTED] pointed out that the petitioner published papers on his research achievements relating to the rescue robot team. Professor [REDACTED] did not identify the referenced articles, and more importantly, he did not describe how these articles impacted the petitioner's field. Professor [REDACTED] also noted that the petitioner's team received several awards related to his research, but it is unclear how receiving accolades results in an impact in the petitioner's field. Professor [REDACTED] also stated: "It is noteworthy to mention the significant contributions of [the petitioner] and his team to mobile robotics research at [REDACTED]. Thanks to his efforts, selling prototypes of their robots to Iran's National Petroleum Corporation within 3 contracts provided a great amount of credit for [REDACTED] robotic research." It is noteworthy that the [REDACTED] contracted with the university for the use of the design in which the petitioner participated. While this may demonstrate that the petitioner's work resulted in a positive impact on a

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university program and has practical value, it is insufficient to demonstrate that the petitioner's evidence satisfies this criterion's requirements. That three instances exist of a corporation electing to pay for the petitioner's proprietary work is not an example of an original contribution of major significance in the petitioner's field. Professor [REDACTED] also indicated that the petitioner "designed and manufactured several industrial robots and delivered them to industry [sic]." The professor did not however, specify the manner in which the delivery of these robots had any impact in the petitioner's field of mechanical engineering or robotics.

According to the Department of Labor's Occupational Outlook Handbook, mechanical engineers typically do the following:

- Analyze problems to see how a mechanical device might help solve the problem;
- Design or redesign mechanical devices, creating blueprints so the device can be built;
- Develop a prototype of the device and test the prototype;
- Analyze the test results and change the design as needed; and
- Oversee the manufacturing process for the device.³

Simply designing mechanical devices for use by customers is a basic job duty for the petitioner's occupation; it does not signify a contribution of major significance within the field of engineering.

[REDACTED] also a professor at [REDACTED], discussed the petitioner's contributions to the university's robotics team and how the petitioner devoted two robot platforms to the university for further research, but failed to specify how contributions to a university's team or donations of equipment to such a team has significantly impacted the petitioner's field of mechanical engineering or robotics as a whole. Professor [REDACTED] also indicated that the petitioner organized several seminars and extracurricular courses which have led to several prominent awards for the participating groups. The professor did not specify the number or the names of such awards and the record is deficient of such evidence. 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)). Regardless, that a single university's robotic team achieved accolades after the donation of equipment is not a contribution of major significance in the petitioner's field.

Regarding the letter from [REDACTED], Managing Director of [REDACTED] and a member of the [REDACTED] he stated that the petitioner is a founding member of the robotics team, [REDACTED] Mr. [REDACTED] indicated that this team received several awards, but he did not indicate how the petitioner's position as a founding member of this team has had a significant impact in the petitioner's field. Mr. [REDACTED] also stated that the petitioner's unique and original design was the main reason that the robots team design received so many accolades.

³ See <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2>, accessed January 29, 2013 and incorporated into the record of proceedings.

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While this may have resulted in original contributions to [REDACTED], it is not sufficient to demonstrate the petitioner's impact in his field, as a whole.

[REDACTED] Associate Professor, [REDACTED], stated that the "[s]ignificance of [the petitioner's] contribution as a judge and technical committee [member] of [REDACTED] made this event up to 2012 standards of the international federation." Professor [REDACTED] did not indicate what effect the petitioner's service as a judge or as part of the technical committee had on the petitioner's field of mechanical engineering or robotics. As such, the professor's letter will not serve to satisfy the regulatory requirements for this criterion.

The petitioner also submitted additional reference letters praising his talents in research robotics and discussing his activities in the field. Talent and experience in one's field, however, are not necessarily indicative of original scientific contributions of major significance in the petitioner's field. It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. The reference letters submitted by the petitioner briefly discuss his skills and activities, but they do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated 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 *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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). 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 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" but rather is admissible only if it will assist the trier of fact to understand the

evidence or to determine a fact in issue). 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). While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. Such independent evidence might include but is not limited to letters from independent industry experts with firsthand knowledge of the petitioner's impact in the field, media coverage, and citations to the petitioner's work.

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

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

The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's affirmative determination as it relates to this criterion for the reasons outlined below.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires authorship of "scholarly articles in the field" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. The record contains only a single published article. The petitioner also only listed one "journal paper" on his curriculum vitae.

As the petitioner only submitted a single published article, he has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or

establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."⁴ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided letters from various individuals explaining his eligibility for this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. Specifically, the director's decision indicated that the petitioner had failed to demonstrate he performed in a leading or critical role for organizations as a whole rather than simply for departments or components within an organization. On appeal, the petitioner did not address the director's primary reason for not granting this criterion. Instead, the petitioner stated:

I have to mention that in all of the mentioned letters, the critical role that I had and the effect of my leadership in different departments and also as a whole in this field have been mentioned, in fact in all of the mentioned letters that I submitted for this criteria it is evident that HOW influential and critical my role was and HOW my leadership changed this field and consequently brought in new innovations to this field.

The petitioner has not identified the correct requirements relative to this criterion. He must demonstrate that the role was performed for organizations or establishments as a whole; however, his appellate statement references the effect of his leadership in departments and his alleged contributions to the field as a whole. While the submitted evidence does establish he performed in a leading or critical role for various teams or of the [REDACTED] within [REDACTED] he has not submitted evidence nor asserted that, as a graduate student at that university, he performed in such a role for the university itself, or for any other organization or establishment as noted within the plain language of this criterion. The petitioner's reference to having an impact in his field is misplaced under this criterion, and is more appropriately presented under the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), which is discussed above in this decision.

The petitioner's failure to identify the director's error in law or error in fact for this criterion equates to an insufficient claim of eligibility within the appellate proceeding. Such a failure essentially amounts to the petitioner's abandonment of the eligibility claim regarding this criterion. *Cf. Desravines v. U.S. Atty. Gen.*, 343 F. App'x. 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

⁴ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on January 23, 2013, a copy of which is incorporated into the record of proceeding.

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

C. 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 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[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.⁵ 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; *Matter of Soriano*, 19 I&N Dec. at 766. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁵ 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).