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

(b)(6)

DATE: FEB 11 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 Director, Texas 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, specifically as a physician specializing in geriatrics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the 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.

On appeal, counsel submits an appeal brief along with evidence that was largely submitted previously. Counsel asserts that the director's denial of the petition was arbitrary, capricious, and an abuse of discretion that was beyond the scope of the federal regulations.[1] Counsel does not raise specific challenges to the director's analysis relating to each of the regulatory criteria found in 8 C.F.R. § 204.5(h)(3), but instead focuses on the director's merits determination. Counsel states in the appeal brief that the director erred in determining that the petitioner is not in the small percentage of individuals who have risen to the top of the field of geriatric medicine. Counsel also maintains that the director erred in concluding that the petitioner failed to demonstrate sustained national or international acclaim in his field.

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):

[1] Counsel observes that there must have been a mistake in adjudication since the director's decision refers to the petitioner as a "film editor" and "educator" in one portion of the merits analysis instead of as a physician specializing in geriatrics. The director's discussion of the criteria discusses the petitioner's evidence and the final merits determination refers repeatedly to the petitioner correctly as a geriatric physician, making what is clearly an inadvertent mistake once in a general summarizing paragraph. The director's decision, read in context, makes clear that the decision is based on the proper record of proceeding.

(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.[2] 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)).

[2] 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).

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.* Nevertheless, as the director's sole basis of denial was a final merits determination, the AAO will also review the evidence in the aggregate.

II. ANALYSIS

A. Evidentiary Criteria[3]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The petitioner submitted evidence along with his Form I-140 in support of this criterion. The director, after reviewing the evidence, concluded that the petitioner failed to satisfy the regulatory requirements and the petitioner does not identify any factual or legal error in this conclusion on appeal. Consequently, the AAO concludes that the petitioner abandoned this claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). Given that the awards are either local or are actually only nominations, the AAO affirms the director's conclusion.

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).

In his initial application packet, the petitioner submitted evidence relating to membership in various organizations. The director determined that the petitioner failed to meet this criterion. The petitioner fails to raise a challenge regarding this criterion on appeal and the AAO concludes that the petitioner abandoned this claim. *See Sepulveda,* 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9. Given that the petitioner did not submit the official membership requirements for the associations of which he is a member, the AAO affirms the director's conclusion.

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

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).

The director determined in his decision that the petitioner met this regulatory criterion and the AAO affirms the director's conclusions in this regard.

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).

The petitioner also submitted evidence relating to this criterion along with the initial filing and in response to the director's Request for Evidence (RFE). The director determined that the petitioner failed to meet this criterion. While the petitioner outlines some of the petitioner's achievements and contributions in a document titled "Letter Appeal/Biography" as part of the evidence to weigh for the merits determination, he fails to raise a specific legal or factual challenge on the Notice of Appeal or in the appeal brief regarding this criterion and the AAO concludes that the petitioner abandoned this claim. *See Sepulveda,* 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9. Given that the petitioner failed to demonstrate the impact of his work beyond the institutions where he has been employed, the AAO affirms the director's conclusion.

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).

The director determined in his decision that the petitioner met this regulatory criterion. The AAO withdraws the director's conclusions in this regard. The record contains two published half-page poster presentation abstracts. These brief abstracts do not have footnotes, endnotes, or a bibliography, and do not include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the abstracts. The record contains no evidence regarding the nature of any peer review for acceptance as a poster presentation at these conferences. As such, these abstracts are not scholarly articles and cannot serve to satisfy this criterion. The petitioner also submitted an unpublished dissertation and presentation slides. This evidence also fails to satisfy this criterion as it does not reflect articles appearing in professional or major trade publications or other major media.

In light of the above, the petitioner has not submitted evidence that satisfies the plain language requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

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. at 306. 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 a similar reputation. 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 satisfied the requirements of this criterion because he is the Medical Director of the Nursing Home Division of and serves as the consulting Medical Director of other facilities. The petitioner submitted employer letters confirming his position as a Medical Director at While the record substantiates the petitioner's claim that he served in a leading or critical role on behalf these facilities, he has failed to satisfy all of the elements of the plain language requirements. The record includes a copy of a certificate showing that received the 2011 Community Service Award from which appears to be a local honor. The record also includes an article published in a local bulletin highlighting the progress of initiative for electronic health records.[5] The contents of the article, however, merely highlight as a profiled institution that has put into place an electronic health records system and does not otherwise discuss the organization's reputation. One local award and one article for a local bulletin that does not discuss reputation are insufficient to establish as an organization with a distinguished reputation. The petitioner has failed to submit any evidence attesting to the distinguished reputation for the other organizations.

Even if the petitioner established that enjoys a distinguished reputation, he failed to document the reputation of the other entities. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for organizations or establishments in the plural. This requirement is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Thus, without establishing that the petitioner served in a leading or critical role for more than one organization or establishment with a distinguished reputation, he cannot satisfy this criterion.

Accordingly, the AAO withdraws the director's finding with regard to this criterion and concludes that the petitioner failed to satisfy the regulatory requirements.

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[4] *See* http://www.merriam-webster.com/dictionary/distinguished, accessed on February 4, 2013.

[5] *See* http://www.nyc.gov/html/doh/downloads/pdf/pcip/march-2010-pcip-newsletter.pdf, accessed on February 4, 2013.

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence. Nevertheless, given that the director's basis for denial was the final merits determination, the AAO will similarly review all of the evidence in the aggregate.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must next conduct 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," 8 C.F.R. § 204.5(h)(2); 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)(3). *See Kazarian*, 596 F.3d at 1119-20.

Counsel asserts on appeal that the petitioner, as the Medical Director nursing division, serves in a "a leadership role only a few exceptionally qualified physicians who are at the small percentage of the very top of their field could fulfill" and could not have "accomplished all that he has and acquired this outstanding level of expertise without being recognized on a national and international level for his work." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel references a letter from the petitioner's current supervisor, Dr. in making the earlier statement about the petitioner being at the top of the field. However, counsel's statement is a mischaracterization of Dr. letter, which observes that while the role of Medical Director is one that "only a few exceptionally qualified physicians could fulfill," and the petitioner "has extraordinary skill" as a physician, the letter never states that the role of Medical Director is one that only a physician within the small percentage of the very top of their field could fulfill. USCIS cannot presume national or international acclaim or presume the petitioner to be within the small percentage of his field based on his current job description. Specifically, the AAO will not infer acclaim by association. Instead, USCIS must assess all evidence and place it in context to determine whether he met the plain language of 8 C.F.R. §§ 204.5(h)(2) and (h)(3), as noted above.

The petitioner submitted evidence of his achievements and original contributions of major significance in his field of endeavor. However, much of the evidence that he submits, including organization-wide initiatives, structuring of a "house call" program, and the design of a curriculum on patient safety and error, are directly related to his employment or are a part of the petitioner's duties for his current or former employment. The record fails to show the impact of these initiatives on the field beyond his employers. Similarly, most of the support letters the petitioner submitted to attest to his achievements and contributions are from former or current supervisors or other professionals who worked with him at his current or previous places of employment. The letters, therefore, come from his immediate circle of colleagues. *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at

1115.[6] (giving limited weight to vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field). On appeal, the petitioner submits two new letters from individuals who were previously not acquainted with him, Dr. the Medical Director of Senior Services/Eldercare at affiliated with the (also affiliated with the at which the petitioner worked as an attending physician), and Dr. Medical Director at However, these letters also have limited probative value since they appear to have been specifically solicited to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Letters from independent references who were previously aware of the petitioner through his reputation and evidence in existence prior to the preparation of the petition carries greater weight and are far more persuasive than new materials from local colleagues prepared especially for submission with the petition. Ultimately, these letters fail to document that the petitioner has any recognition beyond the greater metropolitan area.

The record also contains evidence of awards. The petitioner appears to have received an award presented by the in 2011 for Excellence in Medicine and appears to be in recognition for the petitioner's work in the immediate community. In contrast, the award criterion in the implementing regulations for "an alien of extraordinary ability" requires nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i). Counsel suggests that the two nominations for awards sponsored by organizations in India demonstrate the petitioner's international acclaim. However, nothing in the statute or regulations indicates that mere nominations are sufficient. Furthermore, the record does not contain documentation showing that the two referenced awards are nationally or internationally recognized.

As noted previously, while the record supports the conclusion that the petitioner serves in a leading role for Essence and other organizations, there is insufficient documentation to support a finding that the two organizations have a distinguished reputation. Moreover, given that all of the other evidence fails to show that the petitioner enjoys any recognition beyond the greater metropolitan area and a single institution in his roles for various institutions in those areas cannot demonstrate his national or international acclaim.

While the director found that the petitioner met the regulatory requirements for the criterion relating to scholarly articles, the record does not indicate that his abstracts have generated particular interest or have garnered much acclaim. The impact of his abstracts is a valid consideration in a final merits determination. *Kazarian,* 596 F.3d at 1122.

Similarly, while the director determined that the petitioner submitted sufficient evidence showing that he has judged the works of others pursuant to 8 C.F.R. § 204.5(h)(3)(iv), the nature of the judging experience is a relevant consideration in the final merits determination as to whether the evidence is indicative of national or international acclaim. *See Kazarian*, 596 F.3d at 1122. In this instance, the

[6] 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.

petitioner's judging was directly related to his position as a Medical Director and consistent with his supervisory role of the medical staff. Such an internal level of judging, consistent with any supervisory or management position that requires evaluation of lower level employees, does not demonstrate national or international acclaim.

While the record contains several attestations as to a shortage in the petitioner's field, that issue does not fall within the jurisdiction of USCIS. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998). The petitioner has also failed to explain how that issue is a relevant consideration for the classification sought.

In evaluating the entirety of the record, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor or that he enjoys national or international acclaim. Specifically, while the AAO acknowledges that the praise of the petitioner's local peers, the petitioner's participation as an internal judge of others' work in his organization, contributions that benefit current and previous employers, and the receipt of a local award for his work in the community are indicative of a geriatrician who enjoys an excellent reputation among his current and previous co-workers and community, such evidence is insufficient to distinguish him among other geriatricians to place him among the small percentage at the top of the field and is not commensurate with sustained national or international acclaim. Consequently, the AAO concludes that there is no indication that the director abused his discretion or failed to apply the proper evidentiary standard and affirms his conclusion that the petitioner did not establish that he is an alien of extraordinary ability.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a geriatric physician to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner is a talented geriatric physician, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.