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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

DATE: JAN 09 2013

Office: Nebraska SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on February 25, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on March 25, 2010. The appeal will be dismissed. The AAO will also enter a separate administrative finding of willful material misrepresentation.

According to the petitioner's statement on appeal, he seeks classification as an "alien of extraordinary ability" in the field of "positive train control engineering and the infrared detector based system," which . . . is a part of [e]lectrical [e]ngineering," 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 that the petitioner has 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner submits a statement and asserts that the director erred. The petitioner also submits voluminous supporting documents, most of which were previously submitted to the director. For the reasons discussed below, the AAO finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has failed to satisfy at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3). As such, the AAO finds that the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner's appeal.

## I. LAW

Section 203(b) of the Act states, in pertinent part, that:

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained

- national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
  - (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the AAO concurs with the director's finding that the petitioner has failed to satisfy the antecedent requirement of presenting at least three of the ten qualifying evidence under 8 C.F.R. § 204.5(h)(3).

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

## II. ANALYSIS

### A. Willful Material Misrepresentation

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility, and which might well have resulted in a proper determination that he be excluded.” *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: (1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; (2) that the misrepresentation was willfully made; and (3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

As discussed in the AAO’s November 13, 2012 notice of intent to find willful material misrepresentation, the record contains derogatory evidence relating to the petitioner’s contention that he meets the original contributions of major significance criterion, under the regulation at 8 C.F.R. § 204.5(h)(3)(v). First, the petitioner has filed a document from [REDACTED] Railway [REDACTED] entitled “[REDACTED] C&S Presentation.” The document mentions the petitioner’s name twice. First, the petitioner’s name is listed on the cover page as a [REDACTED] system engineer along with coauthor [REDACTED]. In addition, the petitioner’s name is randomly inserted at the top of the fifth page of the mostly unpaginated document. Specifically, the petitioner’s name is sandwiched between a paragraph that ends with “This query reduced the dataset to 130 NF profiles and 41 true alarm profiles” and the next paragraph that begins with [REDACTED] developed a Graphical User Interface (GUI) to display the filtering results (see figure 6).” The association between the inserted name and the two paragraphs is not apparent from the document. On pages 13 and 14, however, the coauthors are listed at the top as [REDACTED]. Based on independent online research, a USCIS officer found the

same document on the website of the [REDACTED] Engineers and Maintenance-of-Way Association [REDACTED]

Technology to Improve Hot Box Detector Performance 2008.pdf, accessed on August 28, 2012 and incorporated into the record of proceeding. According to this document, [REDACTED] not the petitioner, is listed as the [REDACTED] system engineer on the [REDACTED] document entitled [REDACTED]

Second, the petitioner has filed a patent document entitled [REDACTED] Signal Vital.” Although this document does not indicate that the petitioner is the one who applied for the patent or that he devised or was part of a team that devised the invention, the petitioner alludes to his involvement in the invention by submitting the document to show his original contributions in the field. USCIS has reviewed the website of the U.S. Patent and Trademark Office, which contains the patent application for [REDACTED]. See [REDACTED] %2F [REDACTED] 22&OS=“gps+signal+vital”&RS=“gps+signal+vital”, accessed on August 28, 2012 and incorporated into the record of proceeding. This patent application shows that [REDACTED] not the petitioner, are the inventors of the technology.

Third, the petitioner claims in his statement on appeal that he was invited to present a paper on [REDACTED] at the [REDACTED] 2010 Annual Conference . . . in Orlando, Florida.” As supporting documents, the petitioner has filed: (1) a December 2, 2009 email from [REDACTED] Special Projects, noting that his “submi[ssion of] an abstract for Invitation of Paper submission and present[ation] at the [REDACTED] 2010 Annual Conference” was accepted; and (2) a twelve-page abstract, entitled [REDACTED]. Based on independent online research, a USCIS officer found on [REDACTED] website that the petitioner’s presentation or paper is not listed in the [REDACTED] Annual Conference’s table of contents. See [REDACTED] accessed on August 28, 2012 and incorporated into the record of proceeding.

With regard to this derogatory information, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Because the petitioner has submitted false documents misrepresenting his eligibility in meeting the original contributions of major significance under the regulation at 8 C.F.R. § 204.5(h)(3)(v), the AAO cannot accord any of the petitioner’s other claims any weight.

As of the day of this decision, nearly two months after the issuance of the notice, the petitioner has not filed a response or any evidence to overcome, fully and persuasively, the abovementioned derogatory evidence. An immigration officer will deny a visa petition if the petitioner submits

evidence that contains false information. See Section 204(b) of the Act. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See *Spencer Enterprises Inc. v. United States*, 345 F.3d 683, 694 (9th Cir. 2003) (upholding the AAO's finding that evidence in that matter was not credible). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead the USCIS to conclude that the facts stated in the petition are not true. See *Matter of Ho*, 19 I&N Dec. at 591.

First, the petitioner has submitted false documentation, namely a document from [REDACTED] entitled "[REDACTED] C&S Presentation." He also has falsely claimed in his statement on appeal that he was invited to present a paper on [REDACTED] at the [REDACTED] Annual Conference. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the petitioner's submission of the preceding documents in support of the petition constitutes a false representation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner signed the petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. See section 287(b) of the Act, 8 U.S.C. § 1357(b); see also 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the petition, at Part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." On the basis of the petitioner's signed petition and his statement on appeal, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

Third, the evidence is material to the petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. United States*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. See *Matter of Ng*, 17 I&N Dec. at 537.

The derogatory evidence constitutes material facts because the petitioner has submitted the false documentation to support his claim that he meets the original contributions of major significance criterion, under the regulation at 8 C.F.R. § 204.5(h)(3)(v). This criterion is one of the criteria the petitioner could meet to establish his visa petition eligibility. See 8 C.F.R. § 204.5(h)(3). Because the petitioner has failed to provide competent independent and objective evidence to overcome, fully and persuasively, the AAO's finding that he has submitted falsified documentation, the AAO affirms the finding that the petitioner has willfully misrepresented a material fact. This finding of willful

material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the derogatory evidence discussed above seriously compromises the credibility of the petitioner and the remaining documentation. As previously discussed, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. Nevertheless, the AAO will address the petitioner's failure to demonstrate his eligibility for the classification sought.

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

*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).

On appeal, the petitioner contends that he meets this criterion based on the following documents:

- (1) A February 1999 Guinness World Records Certificate recognizing the Delhi Main Station as having the world's largest route relay interlocking system;
- (2) An Excellence in Performance Award, presented by the petitioner's former employer
- (3) A Growth Leadership Imagination and Courage Award,
- (4) A Growth Leadership External Focus Award, and
- (5) A Growth Leadership Clear Thinking Award.

Based on the evidence in the record, the AAO concludes that none of the abovementioned documentation of achievements demonstrates the petitioner's receipt of nationally or internationally recognized prizes or awards for excellence. First, the Guinness World Records Certificate was awarded to the Delhi Main Station, not to the petitioner. Indeed, neither the certificate nor any news reporting about the certificate – including the February 5, 1999 article “New Rail System at Old Delhi Station” and the undated Government of India's New Goal and New Initiatives article “Railways” – mentions the petitioner's name or discusses the petitioner's involvement with the route relay interlocking system. Although in the United Kingdom, stated in his July 21, 2009 letter that the petitioner “worked on Design Testing and Commissioning the Delhi Main Route Relay Interlocking (RRI) for Indian Railways,” neither the letter nor other evidence in the record establishes that the petitioner's involvement in the project was to such an extent that a certificate presented to the Delhi Main Station constitutes a certificate presented to the petitioner for excellence in his field. Indeed, according to “New Rail System at Old Delhi Station,” the system installation involved “a team of 40 officers and 700 workmen.”

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

Second, although the petitioner has provided copies of (1) an undated letter from [REDACTED] recognizing the petitioner's "excellent performance and noteworthy contribution," and (2) [REDACTED] award certificates, the petitioner has not established that the recognition and awards constitute nationally or internationally recognized prizes or awards for excellence in the field of [REDACTED]. Specifically, the record lacks evidence relating to who or how many people were considered or selected for each recognition or award. The record is also devoid of any information on the nomination or selection process for the recognition and awards, or any evidence showing that the recognition and awards were something other than companies showing appreciation to their employees. Although the petitioner states on appeal that "the committees of judges who determine the awardees do not publish the scope and range of other candidates, since this data is considered private and confidential," the petitioner has not provided any evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for the 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)).

Third, although the petitioner asserts on appeal that he meets this criterion because the [REDACTED] awards demonstrate "his extraordinary contribution for train control solution design and implementation globally," and that "countries included in the competition were [the] United States, India, Kazakhstan, Spain and Germany," the AAO concludes that the evidence in the record does not support these assertions. As noted, the petitioner has not provided sufficient information on the award nomination or selection process. Notably, [REDACTED] an adjunct professor at the [REDACTED] characterizes these awards as "growth awards." Also, the record lacks evidence indicating that a competition was associated with any of the [REDACTED] awards. In addition, the petitioner has not supported his self-serving statements with independent and objective evidence, such as, but not limited to, independent journalistic coverage of the [REDACTED] recognition or [REDACTED] awards in nationally or internationally circulated publications. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at \*5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990).

Finally, the petitioner asserted in his July 30, 2009 letter filed in support of the petition that he has received a number of other awards, including academic awards. On appeal, however, he has not claimed that the awards constitute evidence that he meets this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. See 8 C.F.R. § 204.5(h)(3)(i).

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner contends that he meets this criterion as a “full member of [redacted] and a full member of [redacted].” According to the petitioner, these two associations “do not grant membership to anyone who merely pays the membership dues” and “full membership has to be earned and it is earned by making extraordinary contributions to the field of Train Control and Signaling.”

The petitioner has provided a number of supporting documents, including (1) a January 11, 2010 email from [redacted]; (2) January 2010 [redacted] online printouts entitled “Technical Committees,” “About [redacted]” and “[redacted] 2009-2010 Board of Governors”; (3) a September 2009 [redacted] membership certificate; and (4) January 2010 [redacted] online printouts entitled “About the [redacted]” “Membership,” “Latest News,” “Contact,” “Conferences,” and “Licensing.”

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion because he has not shown that either [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has provided a March 2010 [redacted] online printout, entitled “Membership Classes and Qualifications,” which provides that eight categories of people may become [redacted] members. One category includes, as the petitioner has cited in his statement on appeal: “A person having made outstanding contributions to this Association or to the railway industry [who] may be admitted as a member by majority approval of the entire Board of Directors.” The evidence, however, does not establish that the “outstanding contributions” must be judged by recognized national or international experts in their disciplines or fields, as required under the plain language of the criterion. Moreover, the online printout shows that the [redacted] does not require “outstanding achievements” from the remaining seven categories of potential members. Thus, while [redacted] may admit members with outstanding achievements, it does not require such achievements as mandated under 8 C.F.R. § 204.5(h)(3)(ii).

Similarly, although the petitioner states on appeal that “[m]embership of [redacted] requires exceptional contribution in the field of train control technology” and that “the application process is rigorous and the applicant is scrutinized thoroughly before granting full membership,” he has not provided sufficient evidence to support his claims. In fact, according to the [redacted] online printout entitled “Membership,” “[m]embership of the [redacted] is open to any person engaged or interested in the

management, planning, design installation, maintenance or manufacturing of railway signaling, telecommunications or associated equipment.” Although the printout also discusses “membership grades,” neither the printout nor any other evidence in the record indicates that [REDACTED] requires outstanding achievements of its members.

Moreover, the AAO finds that the March 16, 2010 letter from [REDACTED] Chief Executive, in which he claimed that the petitioner “has been granted full membership due to his outstanding contribution to the field of train control technology,” is insufficient to demonstrate that the petitioner has met this criterion. First, merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *See Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d at 41; *Avyr Associates, Inc.*, No. 95 Civ. 10729, 1997 WL 188942 at \*5. Moreover, neither the letter nor other evidence in the record shows that the [REDACTED] requires “outstanding achievements” of its members as required under 8 C.F.R. § 204.5(h)(3)(ii). Also, neither the letter nor other evidence in the record establishes that the petitioner’s “outstanding contribution” was “judged by recognized national or international experts in their disciplines or fields,” as required under the plain language of the criterion.

Finally, although the petitioner, in his response to the director’s Request for Evidence (RFE), indicated that his [REDACTED] shows that he meets this criterion, the petitioner has not continued to make this assertion on appeal. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented documentation of his membership in associations (plural) 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. *See* 8 C.F.R. § 204.5(h)(3)(ii).

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the petitioner contends that he meets this criterion because he “serves on the committees [REDACTED] and [REDACTED] which has been empowered by the Federal Railroad Administration.” The petitioner has provided a number of supporting documents, including an email and a letter from [REDACTED] online printouts. In her January 11, 2010 email, [REDACTED] indicated that the petitioner was appointed “to [REDACTED].” According to the January 2010 [REDACTED] online printout, “[t]he purpose of [REDACTED] is to continually review current and new technology addressing the installation, testing and maintenance of Positive Train Control wayside equipment and systems and develop recommended ‘industry practices’ with the overall goal of improving the safety and reliability of train operations.”

In her January 4, 2010 letter, [REDACTED] stated that the petitioner was appointed "to [REDACTED] According to the January 2010 [REDACTED] online printout, "[t]he purpose of [REDACTED] is to continually review current and new technology addressing the design, installation, testing and maintenance of signal equipment and systems and develop recommended 'industry practices' with the overall goal of improving the safety and reliability of train operations." The petitioner alleges on appeal that "[t]he panel of [REDACTED] judges the work of its sub-committees and makes necessary changes to the proposed technical specifications." The petitioner's allegation, however, is not supported by evidence in the record. In fact, the petitioner has not provided any evidence relating to the inner workings or decision-making process of the two committees or their sub-committees. As noted, going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Moreover, the evidence shows that [REDACTED] appointed the petitioner to two committees in 2010. The evidence, however, fails to show that the petitioner had actually participated as a judge as of August 2009, when he filed the petition. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As such, the AAO declines to consider the evidence relating to his 2010 [REDACTED] committee appointments.

Finally, had the AAO considered the committee appointments, it would not find that the petitioner has met this criterion, because the petitioner has not provided any evidence of his actually reviewing the work of others as a committee member, and he has not provided any evidence showing that the committee's work, with the aim of "develop[ing] recommended 'industry practices,'" constitutes participating as a judge of the work of others in the same or an allied field.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented evidence preceding the date of filing of his participation, either individually or on a panel, as a judge of "the work of others" in the same or an allied field of specification for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(iv).

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

On appeal, the petitioner contends that he meets this criterion because he "developed [a] 'Multi Peak Filter' for 'Infrared Detector Based Hot Bearing and Hot Wheel Detector,'" which "drastically reduced" the false alarms and false stops of trains, and resulted in "tremendous cost savings." He further states that there are over two thousand hot bearing detectors deployed on the properties of both [REDACTED] and the [REDACTED]. As discussed, in support of this assertion, the petitioner has provided a document from [REDACTED] titled "Multi Peak Filter Detector Performance [REDACTED] Presentation." For the reasons discussed above, this document has been altered to reflect the petitioner's name as an author. Thus, it has no evidentiary value.

As discussed, the petitioner further contends that he meets this criterion because he was invited to present a paper on [REDACTED] at the [REDACTED] 2010 Annual Conference . . . in Orlando, Florida.” Once again, the evidence relating to this conference is contradicted by derogatory evidence obtained by USCIS. Thus, this evidence has no evidentiary value.

In addition to the above evidence having no evidentiary value in and of itself, doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Thus, the derogatory evidence discussed earlier in this decision not only casts doubt on the petitioner’s evidence to which it relates, but also warrants a reevaluation of the reliability of the remaining evidence.

The petitioner also claims to meet this criterion because “[d]ue to his contributions to the field of [REDACTED] the petitioner was invited to join a Ph.D. program of [REDACTED]. As supporting evidence, the petitioner has provided an October 28, 2004 email from [REDACTED], inquiring about the petitioner’s interests in becoming a Ph.D. student. Neither the email nor other evidence in the record indicates that the petitioner was recommended to consider the Ph.D. program because he had made any original contribution of major significance in the relevant field.

In addition, as supporting evidence that he meets this criterion, the petitioner has provided email correspondence relating to potential employment opportunities and a patent document entitled “Methods and Systems for Making a GPS Signal Vital.” Although the email correspondence reveals that he has the skills these employers are seeking, the correspondence does not indicate that the petitioner either has made original contributions or contributions of major significance in the field, as such are not the usual requirements for an employment opportunity. Similarly, regarding the patent, the AAO has routinely held that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215, 221 n.7 (Assoc. Comm’r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner has made a contribution of major significance in the field through his development of this idea. Moreover, as discussed above, the petitioner is not a listed inventor for this patent. Thus, it has no evidentiary value in establishing his personal contributions.

The petitioner has also provided a number of reference letters, including:

- (1) A July 15, 2009 letter from [REDACTED] a presidential professor at the [REDACTED] [REDACTED] in which [REDACTED] discussed the petitioner’s accomplishments during his graduate studies;

- (2) A July 20, 2009 letter from [REDACTED] a retired [REDACTED] and an adjunct professor at the [REDACTED] in which [REDACTED] discussed the petitioner's graduate school studies and his subsequent [REDACTED] awards;
- (3) A July 23, 2009 letter from [REDACTED], in which [REDACTED] discussed the petitioner's involvement in developing the [REDACTED] system for Indian Railways and the petitioner's [REDACTED] "award for excellent performance and a noteworthy contribution in 2001";
- (4) A July 7, 2009 letter from [REDACTED] a program manager at [REDACTED] in which [REDACTED] discussed the petitioner inventing "the precision train control system solution," "the integrated solution for Cab Signaling/Automatic Train Control (ATCI)," and the "integrated Train Control System (ITCSI)";
- (5) A July 7, 2009 letter from [REDACTED], a senior systems engineer at [REDACTED] in which [REDACTED] discussed the petitioner's "effort [in] designing country specific technical and commercial proposals for vital microprocessor based signaling systems," and concluded that the petitioner had "made a vital and significant contribution by making innovative technical design and commercial proposals in signaling and telecommunications that enhances efficiencies and speed of railroad traffic without compromising on safety of freight and passenger traffic in the United States and other parts of the world";
- (6) A July 16, 2009 letter from [REDACTED] a quotes and proposals manager at [REDACTED] in which [REDACTED] discussed the petitioner's work at [REDACTED] including "developing a techno-commercial proposal for Automatic Train Control and Signaling that integrated [REDACTED] cutting edge technology with the existing rail infrastructure for safety and reliability of the rail freight and passenger transport in the United States and around the world";
- (7) A July 6, 2009 letter from [REDACTED] a system engineering manager at [REDACTED] in which [REDACTED] discussed the petitioner's "contributions to the development of train control system designs for international markets such as Saudi Arabia, Kazakhstan and Pakistan," and concluded that the petitioner "has made tremendous contributions to the design of new solutions to improve the safety and efficiency of Rail Transport for [REDACTED] customers"; and
- (8) A July 21, 2009 letter from [REDACTED] in the United Kingdom, in which [REDACTED] discussed the petitioner's work at [REDACTED] under his supervision.

Although the reference letters show the petitioner successfully completed his graduate school studies and was considered a valuable employee by some of his [REDACTED] colleagues, the reference letters do not constitute evidence of his original contributions of major significance in the field. Specifically, some of the reference letters state that the petitioner's work is "innovative" and constitutes "breakthroughs," and that the petitioner is "the first to design and install [REDACTED] suburban railways in [REDACTED]". None of the reference letters, however, demonstrate that the petitioner's work constitutes contributions of major significance in the field by explaining his impact on the field itself. The record lacks evidence

that the petitioner's work or design has been adopted on a large scale in the field, that reputable organizations or publications in the field have deemed his work or design as contributions of major significance, or any other independent and objective evidence indicating that his work or design constitutes contributions of major significance in the field. At best, as suggested by the petitioner's references, his work or design has improved efficiency and safety, and generated revenues for his employers, but not every improvement within an evolving technical field constitutes a contribution of a major significance in the field.

Moreover, 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). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165.

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at \*5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15. The petitioner also has failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

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

On appeal, the petitioner contends that he meets this criterion because he played a "vital role . . . in conducting the research and authored journal publication that was published in [REDACTED]

On appeal, the petitioner states that his publication had "[a] total of 12 citations and 12

referrals.” As supporting documents, the petitioner has provided: (1) an abstract of a [REDACTED] article entitled [REDACTED] (2) January 2010 online printouts from [REDACTED] showing that the [REDACTED] article was cited 12 times, and (3) abstracts of articles that cite the petitioner’s [REDACTED] article.

Although the evidence establishes that the petitioner has authored one scholarly article, the evidence does not demonstrate that he has met this criterion. Specifically, the plain language of the criterion requires evidence of the petitioner’s authorship of scholarly articles, in the plural, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. While the petitioner’s [REDACTED] article constitutes one example of a scholarly article, the evidence in the record fails to show that the petitioner has authored a second scholarly article, as required under the plain language of the criterion. Although a December 2, 2009 email from [REDACTED] shows that the petitioner submitted “an abstract for Invitation of Paper,” there is no indication that the submission resulted in a scholarly article in the field, in a professional or major trade publication or other major media, as required under the plain language of the criterion. Notably, the petitioner has not rebutted the derogatory information revealing that the petitioner’s paper is not listed among the table of contents for the proceedings of this conference in 2010. Regardless, that conference postdates the filing of the petition.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. See 8 C.F.R. § 204.5(h)(3)(vi).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

On appeal, the petitioner contends that he meets this criterion because “[s]ince November 2009, the petitioner is employed by [REDACTED] in the United States with an annual salary of \$100,000 plus performance bonus. The total package with [REDACTED] increase over the package with [REDACTED] the petitioner’s former employer. As supporting evidence, the petitioner has provided: (1) an October 30, 2009 letter from [REDACTED] a [REDACTED] senior recruiter, (2) copies of the petitioner’s 2009 pay stubs, (3) copies of the petitioner’s 2007 and 2008 Wage and Tax Statements (Form W-2), and (4) the petitioner’s 2009 bank account statements.

Based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion. First, the petitioner has not provided any independent and objective salary information for someone who holds the same or a similar position as the petitioner in the field of “positive train control engineering and the infrared detector based system.” As such, the AAO lacks sufficient evidence to compare the petitioner’s salary to those of others in the field. Second, the petitioner’s assertion that his own salary and compensation increased by 35 percent as of December 2009 does not constitute evidence that he has commanded a high salary or other significantly high remuneration for services

in relation to others in the field, as required under the plain language of the criterion. Finally, as the petitioner filed the petition in August 2009, the AAO declines to consider as supporting evidence the petitioner's salary as of December 2009, four months after the filing of the petition. As noted, it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(ix).

### C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence.

### III. CONCLUSION

By filing the instant petition and submitting demonstrably false evidence, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Moreover, 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.

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.<sup>3</sup> Rather, the proper conclusion is that the petitioner has failed to

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<sup>3</sup> The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* 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)

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satisfy the antecedent regulatory requirement of presenting at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3). *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:**

The appeal is dismissed and the AAO enters a separate finding of willful misrepresentation of a material fact.

**FURTHER ORDER:**

The AAO finds that the petitioner knowingly submitted false documents in an effort to mislead USCIS on a criterion material to his eligibility for a benefit sought under the immigration laws of the United States.