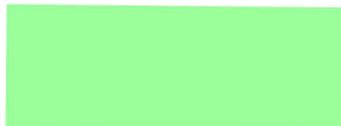




U.S. Citizenship
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Services

(b)(6)

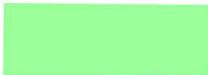


DATE: **JUL 19 2013**

Office: NEBRASKA SERVICE CENTER

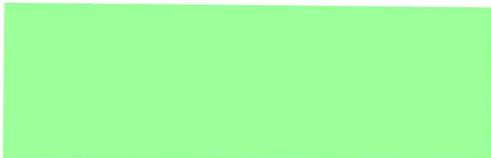
FILE: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

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 January 19, 2012. On June 27, 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 October 29, 2012. On appeal, the petitioner submits a brief 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)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," 8 C.F.R. § 204.5(h)(2), and "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). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

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).

Kazarian v. USCIS, 596 F.3d at 1119-20.

Thus, *Kazarian* acknowledges that the regulations set forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. If the petitioner satisfies three or more criteria, then USCIS will consider the evidence in the record in the context of a “final merits determination.” *Id.* at 1121. If the petitioner fails to satisfy the regulatory requirement by submitting three types of evidence, the petition may be denied for that reason alone. *Id.* at 1122.

The court’s multiple references to a final merits determination make clear that the court assumed that a final qualitative inquiry might occur later. The court’s references to a final merits determination are a critical and integral part of the rationale for the court’s holding. *See, e.g., Boumediene v. Bush*, 553 U.S. 723, 762-63 (2008) (evaluating whether a passage from a prior opinion constitutes dicta).

Significantly, the Ninth Circuit has reaffirmed the two-step approach. *See Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011), *aff’d*, 683 F.3d 1030 (9th Cir. 2012). The Court of Appeals for the Ninth Circuit adopted as its own the “well-reasoned” district court opinion. *Id.* Specifically, the district court stated:

Although USCIS erred in some of its conclusions as to Mr. Rijal's showing on the threshold evidentiary criteria, it is apparent that it made those errors with an eye toward the ultimate merits determination. In each instance, USCIS sought evidence that demonstrated sustained acclaim. There is no threshold requirement that the evidence demonstrate that acclaim, but ultimately, USCIS must determine whether the evidence demonstrates “sustained national or international acclaim.”

772 F.Supp.2d at 1347 (citations omitted).

Thus, the two-step process is consistent with the statute, regulation and federal case law. *See also Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm’r 1994) (determined golfer established eligibility under section 203(b)(1)(A) of the Act by assessing the initial evidence under the statutory and regulatory standard).

Counsel’s primary argument within the appellate brief is that the two-step adjudication process relating to extraordinary ability petitions is a violation of the statute and the regulation. He characterizes any final merits determination within the adjudication process as an “*ad hoc* change to the existing regulatory framework governing the matter, an exercise that is not legally permissible.” Specifically, counsel asserts that applying a two-part analysis is a violation of the Administrative Procedure Act (APA).

The *Kazarian* court, however, interpreted the two-step process from the existing regulations. The regulation already contemplates a subsequent review of the evidence pursuant to the criteria at 8 C.F.R. § 204.5(h)(3) by referencing that evidence as “initial” evidence. Any corrective “change” in

adjudication through the use of a final merits determination is purely procedural and in harmony with the controlling regulation. Specifically, the final merits determination simply explains when during the adjudicative process USCIS will review the evidence under the regulatory standard.

Counsel's appellate brief also cited to a district court case relating to the extraordinary ability classification, *Buletini v. INS*, 860 F.Supp. 1222 (E.D. Mich. 1994). In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Moreover, *Buletini* states: "Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in [the regulation], the alien must be deemed to have extraordinary ability unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard." 860 F. Supp. at 1234. Thus, the *Buletini* court did not reject the possibility of a final merits determination. Four months after *Buletini*, the agency issued a binding precedent decision that did not simply "count" the evidence, but rather assessed the evidence under the entire regulatory standard. *Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm'r 1994).

Here, the *Kazarian* court's two-step construction flowed not from any effort to resolve ambiguity in the statute, but from the AAO's "improper understanding" of the regulatory requirements to establish extraordinary ability. See 596 F.3d at 1119-21; see also *Rijal*, 772 F.Supp.2d at 1346 ("Both [the plaintiff] and the USCIS often seem to assume that satisfying three criteria is the end of the 'extraordinary ability' inquiry. They are mistaken.") (citing *Kazarian*). Thus, *Kazarian*, a controlling precedent in the Ninth Circuit, leaves no room for an alternate interpretation as it found the AAO's construction of the regulations to be improper or erroneous. Accordingly, the AAO will conduct the two-step analysis set forth by the *Kazarian* court in the instant case.

II. ANALYSIS

A. Comparable Evidence

Several of the criteria are written in terms broadly applicable. 56 Fed. Reg. 60897-01, 60898. The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the alien is able to demonstrate that he or she is unable to qualify for this classification because the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the alien's occupation. See also 56 Fed. Reg. at 60898-99. It is the petitioner's burden to explain why the regulatory criteria do not readily apply to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner has not established that the regulatory criteria do not readily apply in his occupation as a software engineer. In fact, as indicated in this decision, counsel initially specifically addressed five of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet or submit sufficient documentary evidence under at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of

comparable evidence. As such, the petitioner has not met the requirements for submitting comparable evidence.

B. Evidentiary Criteria²

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.

Counsel initially asserted that the commercial publication of the petitioner's articles satisfies this criterion because those articles have been "excerpted, cited and incorporated into the works of other scholars and all have been commercially published." 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. Consistent with the director's analysis, articles that cite the petitioner's work as one of several references are about the author's own work or, in the case of review articles, about recent work in the field in general. They are not about every author of every cited work. Accordingly, the petitioner has not submitted qualifying evidence under 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.

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion.

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

Initially, counsel asserted that the petitioner's contributions to his employer constitute original contributions of major significance in the field. In response to the director's RFE, counsel asserted that the petitioner's pending patents and the incorporation of his work into two course curricula demonstrate that the petitioner has made contributions of major significance in the field. The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. Specifically, the director concluded that patents, while indicative of originality, do not demonstrate the impact of the innovations and that inclusion in the curricula at two universities is not evidence of a sufficient impact to constitute a contribution of major significance in the field. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO affirms the director's analysis and conclusion. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

² 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 authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a “high salary or other significantly high remuneration for services, in relation to others in the field.” Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.³ The petitioner must present evidence of objective earnings data showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grinson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner provided website printouts from the following sources: the Foreign Labor Certification (FLC) Data Center’s Online Wage Library, salary.com, www.indeed.com, www.glassdoor.com, and monster.com. The petitioner also submitted an employment offer dated November 24, 2011. The director determined that the petitioner met the requirements of this criterion. The AAO withdraws the director’s favorable determination as it relates to this criterion for the reasons discussed below.

The November 24, 2011 employment offer was from ShareThis reflecting the company offered the petitioner an annual salary of \$145,000 for the position of Senior Research Software Engineer. The letter also identified other forms of remuneration such as a bonus upon the completion of the petitioner’s first year with the company, stock options, and a health plan among other incentives.

The FLC Data Center’s Online Wage Library website printouts provided wage information for Application Software Engineers in the “Oakland-Fremont-Hayward, CA Metropolitan Division.” The FLC Data Center’s Online Wage Library relies on the Bureau of Labor Statistics (BLS) Occupational

³ While the AAO acknowledges that a district court’s decision is not binding precedent, the AAO notes that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

Employment Statistics (OES) wage estimates.⁴ The employment data are benchmarked to average employment levels.⁵

The evidence from salary.com provided salary information relating to software engineers in the California area rather than the industry or the field as a whole. The plain language of the regulation requires the petitioner to establish that the petitioner's salary is high when compared to others in his field and average statistics limited to one particular geographic area of California do not meet this requirement. Furthermore, the salary.com website states: "The data is intended to provide a reasonable range for typical cash compensation earned by the typical person working in that job."⁶ Comparisons to "typical cash compensation earned by the typical person" is not an appropriate comparison for the petitioner to demonstrate his compensation is high relative to others in the field.

The remaining evidence of website printouts from www.indeed.com, www.glassdoor.com, and monster.com also focuses only on one geographic location within California.

All of the above salary information for comparison purposes relates to average salaries within one particular geographic area of California. This criterion requires the petitioner to establish that his salary is high when compared to others in his field rather than providing average statistics limited to one particular geographic area of California.

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

C. Summary

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

D. Final Merits Determination

Although the petitioner failed to satisfy at least three of the evidentiary criteria and a final merits determination is not required within the present proceedings, the director performed this analysis as the sole basis of the denial. Thus, the AAO will review the director's determination. 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. In accordance with the *Kazarian* opinion, the AAO will 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

⁴ See <http://www.flcdatcenter.com/faq.aspx>.

⁵ See http://www.bls.gov/oes/oes_emp.htm#estimates.

⁶ See <http://swz.salary.com/docs/salwizhtmls/methodology.html#Methodology>, accessed July 2, 2013, a copy of which is incorporated into the record of proceeding. By submitting evidence from this website, the petitioner has introduced the information on that website into the record of proceeding.

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. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

With regard to the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), as discussed above, the petitioner does not contest the director’s adverse finding under the antecedent procedural step. Claims under this criterion supported solely with a nominal number of citations to his own work falls substantially short of being indicative of “that small percentage who have risen to the very top of the field” of software engineering, or that he has sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

With regard to the petitioner’s judging experience, the AAO affirms the director’s findings that although the petitioner meets the plain language requirements of this criterion, the evidence does not demonstrate that he is eligible for the employment based classification sought. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3). While the petitioner asserts on appeal that the director’s reasoning relating to the petitioner’s judging experience was circular, the nature of the beneficiary’s judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary’s national or international acclaim. See *Kazarian*, 596 F.3d at 1122. Counsel’s reliance on the *Buletini* district court decision which predates the Ninth Circuit decision in *Kazarian* is not persuasive. See *Matter of K-S-*, 20 I&N Dec. at 715. Moreover, the court in *Buletini* was concerned with an interpretation that required an alien to first demonstrate “extraordinary ability” in order to satisfy the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). The director did not follow this “circular exercise” that troubled the court. Rather, within the final merits determination, the director looked at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with national acclaim.

The petitioner’s judging experience consists of an invitation to referee papers submitted for publication during his time as a Ph.D. candidate in 2007, in addition to serving as a program committee member at [REDACTED] conference in 2009. The AAO notes that peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at literary conferences. Occasional participation in the peer review process is not indicative of or consistent with sustained national or international acclaim at the very top of his field.

Without evidence that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences or served in an editorial position for a distinguished journal, the petitioner has not established that he is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Furthermore, some of the petitioner’s references have refereed more than 30 conferences, held a seat on the editorial board of at least one scientific journal, have served as a program committee member for 11 conferences, and list numerous instances as a [REDACTED]

reviewer or panelist. Thus, their level of judging suggests that the petitioner's peer review experience does not place him within the small percentage at the top of his field.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the petitioner does not contest the director's adverse finding under the antecedent procedural step. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. The level at which the petitioner's contributions have impacted his field, as a whole, is the determining factor as to whether the petitioner is among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim at such an elevated level. See 8 C.F.R. § 204.5(h)(2). The petitioner's claimed contributions relate to work performed for his previous employer, his pending patent applications, and the inclusion of two of his research papers in the curricula at two universities. Benefits to the petitioner's previous employer that are not shown to have spread sufficiently to have a broad impact within the industry as a whole is not work commensurate with one who has risen to the very top of the field of endeavor. Although the petitioner's current employer expressed an interest in filing two patent applications for the petitioner's innovations, the record lacks evidence either that the employer filed the applications or that the U.S. Patent and Trade Office granted the patents. While the petitioner provided evidence that a professor at the incorporated the petitioner's work into one course and a Ph.D. student at the in the United Kingdom "included [the petitioner's published paper] as reading/presentation material in my talk in our group seminar," the petitioner has not established that these two events reflect the broader impact in the field necessary to demonstrate the petitioner's work is recognized as being at the level of one of that small percentage who have risen to the very top of their field.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the AAO affirms the director's conclusion that although the petitioner met the plain language requirements of this criterion, the evidence is not indicative of sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. At the time he filed the petition, the petitioner provided evidence of six articles or conference papers. In concluding that the petitioner's publication record was not indicative of or consistent with national or international acclaim, the director noted that the petitioner had not demonstrated that the petitioner's articles had garnered more than a few citations. On appeal, counsel relies on two district court decisions for the proposition that requiring citations goes beyond the regulatory requirements. The *Kazarian* court, however, expressly stated that citations, or a lack thereof, may be relevant to the final merits determination of whether a petitioner is at the very top of his field. 596 F.3d at 1122. As such, the petitioner's publication record is not indicative of or consistent with sustained national or international acclaim or status among the small percentage at the top of the field.

As discussed above, the petitioner has not established that he meets the high salary or significantly high remuneration criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Specifically, the petitioner submitted documentary evidence of his recent earnings without providing sufficient documentary evidence comparing his salary to others in his field as a whole rather than limited to a particular geographic area. Although the petitioner's salary sits above the average in his geographic

location, he has not provided information that would enable the AAO to provide a proper determination of whether his salary is reflective “of that small percentage who have risen to the very top of the field of endeavor.” See *Matter of Price*, 20 I&N Dec. at 954.

The record contains several letters, some of which generally attest to the petitioner’s extraordinary ability or ranking at the top of his field. Vague, solicited letters from local colleagues do not establish eligibility for the classification sought. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010).⁷ Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). [REDACTED], a software engineer at [REDACTED] indicates that he supervised the petitioner’s internship at [REDACTED]. [REDACTED] characterizes the petitioner only as having shown “great potential as a researcher and an engineer,” speculating that the petitioner “will be an invaluable asset to any community he joins.” Similarly, while [REDACTED], an associate professor at [REDACTED] broadly asserts that the petitioner as at the top of the field, in support of that conclusion he only rates the petitioner “highly exceptional in this peer group” of the students he mentored. [REDACTED] a professor at [REDACTED], describes the petitioner as “knowledgeable in the area of distributed computing” and an “excellent collaborator.” [REDACTED] concludes: “I feel confident that he is by now a top notch software engineer.”

Ultimately, 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. The petitioner, a software engineer, relies on his minimal publication and citation record, pending patents, the praise of his immediate circle of peers, and an above-average salary. Based on the accomplishments of his references, discussed above, it appears that the highest level of the petitioner’s field is far above the level he has attained.

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.

A review of the evidence in the aggregate, however, does not establish that the petitioner has distinguished himself 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 of software engineering. The evidence is not persuasive that the petitioner’s achievements set his significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁷ 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.

(b)(6)

NON-PRECEDENT DECISION

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.