



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUL 26 2013**

Office: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

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:

[Redacted]

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, 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, 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 August 20, 2012. On August 30, 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 December 5, 2012. On appeal, the petitioner submits a brief with 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.<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." *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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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 8 C.F.R. § 204.5(h)(3)(vi).

## II. ANALYSIS

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

*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.*

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Throughout the proceeding, counsel has referenced the petitioner's publication record under this criterion, including the petitioner's articles published after the date of filing. However, a petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). With respect to the articles and presentations that predate the filing of the petition, the regulation at 8 C.F.R. § 204.5(h)(3) contains a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi), which includes presentations published in conference proceedings. If every provision of the regulation is to have meaning, USCIS must presume that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding

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

that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

Similarly, the petitioner has presented his findings at various scientific conferences along with numerous other participants. The director discussed the conference-related evidence submitted under this criterion and found that the petitioner failed to establish his eligibility. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. Participation in such events, however, does not equate to an original contribution of major significance in the field absent evidence of the impact of the presentation in the field.

The petitioner also submitted provisional patents. As stated by the director, the provisional patents cannot serve to assist the petitioner in qualifying for this immigrant classification as each provisional patent postdates the petition filing date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec.at 49.

Initially, counsel asserted that the petitioner was submitting evidence of frequent citation as evidence of the impact the petitioner's articles have had in the field. The petitioner submitted a printout from <http://scholar.google.com> with the petitioner's profile that references 137 citations but then lists the citation results for 27 articles authored by other researchers. The director concluded in the RFE that the submitted evidence did not demonstrate the number of articles that have cited the petitioner's articles. In response, the petitioner submitted results of a search of his first name, his last name and ' [REDACTED]' at <http://scholar.google.com>. These results produced articles the petitioner authored, conference credits, articles that may be citations and articles that do not appear to relate to the petitioner. The petitioner added boxes to several of the results, which appear to reflect those articles that he asserts he authored. Of the articles the petitioner authored, one article, '[REDACTED]' garnered three citations.<sup>3</sup> This evidence did not resolve the ambiguity of the evidence the petitioner initially submitted. Thus, the director concluded that the citation evidence did not demonstrate the petitioner's impact in the field. On appeal, the petitioner submits no new citation evidence to resolve the ambiguities the director raised. Instead, counsel concedes that the petitioner is not well cited, asserting that "citations are only one indication of the significance of an alien's prior research and achievements." Counsel then asserts that in this matter, published articles and the testimonial letters demonstrate the major significance of the petitioner's research. As such, it remains that the petitioner has not documented with probative and relevant evidence that he is well cited as counsel initially claimed and relies solely on published articles, evidence counsel characterizes as media reports, and the reference letters as evidence of his influence. Counsel notes the number of published articles and quotes from several letters.

Although the director noted that the media reports relating to the petitioner could not factor into this decision because it postdated the petition filing date, the petitioner continues to reference this coverage on appeal stating: "The media reports serve to further show [the petitioner's] continued and sustained acclaim in the field as well as provide evidence of the significance of his work."

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<sup>3</sup> Another article, '[REDACTED]' garnered two citations, but the petitioner did not box that article and, thus, does not appear to claim he is the author of that article.

Before establishing that the petitioner has sustained any acclaim he claims to have enjoyed at the time of filing, the petitioner must first establish that he satisfied three criteria at the time of filing. For this purpose, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. See *Matter of Pazandeh*, 19 I&N Dec. 884, 886 (BIA 1989) (citing *Matter of Atembe*, 19 I&N Dec. 427, 429 (BIA 1986); *Matter of Drigo*, 18 I&N Dec. 223, 224-225 (BIA 1982); *Matter of Bardouille*, 18 I&N Dec. 114, 116 (BIA 1981)). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977) emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977), which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4<sup>th</sup> Cir. 2008).

Even if the media reports were relevant to the petitioner's eligibility as of the date of filing, some of them are near-identical promotional press releases originally distributed by [REDACTED] and for which the news websites "make no warranties or representations in connection therewith." The remaining media reports, while containing no disclaimers, are near identical press releases distributed by [REDACTED] rather than independent journalistic coverage of the petitioner's innovations. These purely promotional press releases are not probative of the field's or the media's response to the petitioner's work.

Regarding the expert letters, language contained within several letters is either identical or similar to the language within other expert letters in the record. These similarities across the various letters suggest that the language in the letters is not the authors' own. Cf. *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Specifically, the letters from [REDACTED] of the [REDACTED] and [REDACTED], an associate professor at the [REDACTED] in Ukraine, contain virtually identical language with respect to two paragraphs beginning "After reviewing [the petitioner's work in the context of the development of science . . .]" The letters also both contain another two near-identical paragraphs starting with "Another penetrating barrier system. . . ." For example, in the second

half of the near-identical paragraph beginning with “[The petitioner] has made outstanding contributions to optical coherence tomography (OCT) . . .,” [REDACTED] stated:

With this ultrahigh resolution OCT system, subcellular imaging for the first time was demonstrated. As a result of [the petitioner’s] revolutionary finding, the cell membrane and nuclei can be detected clearly. [The petitioner’s] work is the [sic] **one of the few** reports for subcellular level OCT imaging. This technique is important because it will make it possible to understand, in a detailed manner, what happens to the cell when cancer occurs inside the human body. Since many scientists are working on exploring new techniques for in vivo cellular level imaging, which will exhibit high promising [sic] for early cancer diagnosis, [the petitioner’s] work has provided the groundwork and foundation that will help these scholars build upon his research and advance their own studies.

(Bold emphasis in the original.)

[REDACTED] letter stated:

With this ultrahigh resolution [magnetic resonance imaging] MRI system, subcellular imaging for the first time was demonstrated. As a result of [the petitioner’s] revolutionary finding, the cancer cell membrane and nuclei can be detected clearly. [The petitioner’s] work is the [sic] one of the few reports for subcellular level brain imaging. This technique is important because it will make it possible to understand, in a detailed manner, what happens to the cell when cancer occurs inside the human body. Since many scientists are working on exploring new techniques for in vivo cellular level imaging, which will exhibit high promising [sic] for early cancer diagnosis, [the petitioner’s] work has provided the groundwork and foundation that will help these scholars build upon his research and advance their own studies.

Not only are these passages nearly identical, each contains the same grammatical errors. As quoted by counsel on appeal, [REDACTED] does state: “As further indication of the quality and significant [sic] of his work, the light source at 1.0 micrometer has been accepted by other OCT scientists and used for high resolution ocular imaging.” This language appears in one of the near-identical paragraphs. [REDACTED] states: “As further indication of the quality and significant [sic] of his work, systems designs and algorithms has been accepted by other imaging scientists and used for high resolution brain imaging.” [REDACTED] does not provide any examples of independent researchers using the petitioner’s high resolution ocular imaging or systems designs and algorithms. As quoted by counsel on appeal, [REDACTED] who works in Ukraine, goes on to assert that the petitioner’s work has been used at the [REDACTED] Davis, but does not explain how he has firsthand knowledge of this work. The record contains no letters from anyone at that institution.

Furthermore, the letter from [REDACTED], Professor at [REDACTED] (China) contains approximately two full pages of nearly identical

text when compared to the letter from [REDACTED] an assistant professor at [REDACTED]. The near identical language begins with “In addition, [the petitioner] also made significant achievements in the study of ultrahigh resolution . . .” and continues through the paragraph that begins “I am particularly impressed by [the petitioner’s] extraordinary achievements in multiple disciplines and outstanding ability in cooperating with scientists of different fields.” On appeal, counsel quotes [REDACTED] assertion that the petitioner’s article that allegedly appeared in the “[REDACTED] the light source at 1.0 micrometer was accepted by other OCT scientists.” Notably, however, as counsel also quotes on appeal, [REDACTED] letter, which includes almost identical language, asserts that this work appeared in [REDACTED]. The initial list of exhibits does not include any articles published in the [REDACTED] the most similarly named journals are the [REDACTED] and the [REDACTED]. The director’s decision stated that the evidence on record did not support the claim that other OCT scientists have accepted the petitioner’s work and the petitioner failed to submit such evidence on appeal or explain what evidence in the record the director failed to consider.

Because someone other than the purported authors appears to have drafted the letters, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Even if the letters did not contain similar language, they do not demonstrate the petitioner’s eligibility under this criterion. On appeal, counsel quotes from a letter from [REDACTED], Professor of Computer Science at the [REDACTED]. [REDACTED] asserted that the petitioner “has made breakthrough contributions to medical imaging sciences” through his creation of “an imaging system with an ultra high resolution that provides molecular and cellular level details of the cancer.” As support for this general assertion, however, [REDACTED] stated: “[The petitioner’s] breakthrough achievement revealed a *hopeful* way for early cancer diagnosis. Because many scientists are exploring new techniques for in vivo imaging of tissue cell for cancer research, [the petitioner’s] work *will* benefit their studies in [sic] an international scale by providing a foundation to build on.” (Emphasis added.) [REDACTED] identified some of the petitioner’s additional research findings that, in his opinion, have the potential to significantly impact the field, but he did not identify any of the petitioner’s contributions that have already been both original and of major significance in the petitioner’s field. [REDACTED] also asserted that the petitioner’s work has been influential in the field as it has been adopted by medical research facilities and through the publication of the petitioner’s papers. Like [REDACTED] asserts that the impact of the petitioner’s work is apparent at the [REDACTED] Davis, as well as [REDACTED]. Once again, however, no one at either institution confirms their use of the petitioner’s work. Finally, [REDACTED] asserts broadly that researchers in the United States, Australia, the United Kingdom, China, India and France have used the petitioner’s work. [REDACTED] does not support this vague and general assertion with any specific examples.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. It can be expected that, to rise to

the level of contributions of major significance, other experts would have already reproduced and confirmed the petitioner's results and applied those results in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work. [REDACTED] did not identify how the petitioner has already made a significant impact in his field, which is required by this regulatory criterion. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. This evidence does not establish that, as of the priority date, the petitioner had made contributions of major significance in the field as required by the regulation.

In addition to the language that also appears in [REDACTED] letter, [REDACTED] provided several indicators of the petitioner's research breakthroughs with the potential to impact his field stating:

- “[The petitioner’s] technique is important because it *will make it possible* to understand . . . what happens to the cell when cancer occurs inside the human body;”
- “[The petitioner’s] work has provided the groundwork and foundation that *will help* these scholars build upon his research and advance their own studies;”
- “[The petitioner’s] findings were published in AACR and IEEE Journals. As further indication of the quality and significant [sic] of his work, systems design and algorithms has been accepted by other imaging scientists and used for high resolution brain imaging . . . This cutting edge result *will benefit* the biomedical imaging and brain science field greatly and in turn have a highly positive impact on the United States;”
- “This achievement *makes it hopeful* for the clinical evaluation of hemodynamic to prevent brain disorders . . . The great impact of this achievement can be seen by the national and international conferences and journals;”
- “[The petitioner’s] research *will interpret* the imaging ability for cellular level structures and help synthesize and design novel medical imaging techniques and instruments for cancer diagnosis and brain disease detection . . . The fact that [the petitioner’s] own research as well as the research of many other scientists *is being proposed for practical usage and lab tests* proves that [the petitioner’s] work is of significant and vital national importance.”

(Emphasis added.) While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive attention from the scientific community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. It remains the petitioner's burden to document the actual impact of his articles. That the petitioner will provide a prospective benefit to the United States as a permanent resident is a requirement under the Act. *See* section 203(b)(1)(A)(iii) of the Act. However, [REDACTED] does not identify how the petitioner has already made a significant impact in his field, which is required by this regulatory criterion. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49.

In addition to the similar language that appears in [REDACTED] letter, [REDACTED] indicated that the petitioner "is an outstanding researcher with extraordinary ability who has made significant contributions to medical optic imaging sciences, especially in the areas of research related to OCT. These original contributions will substantially benefit prospectively the United States by improving early disease diagnosis for millions of American [sic]." 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] indicated the petitioner made major progress in the area of OCT imaging resolution and that the petitioner's "revolutionary finding . . . will make it possible to understand . . . what happens to the cell when cancer occurs inside the human body." [REDACTED] also stated this finding "has provided the groundwork and foundation that will help these scholars build upon his research and advance their own studies." [REDACTED] further described the petitioner's additional findings that "will allow further insights into the functioning of the brain," or that "will benefit the biomedical imaging and ophthalmology science field," or that "makes it hopeful for the clinical evaluation of ocular meodynamics to prevent blindness." As previously stated, that the petitioner's work has the potential at some point in the future to have a significant impact in the field is not sufficient to meet this criterion's requirements. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] System Replacement Technical Director at [REDACTED] explains that he collaborated with the petitioner on important solutions for the State of California, Department of Health Care Services. As quoted by counsel on appeal, [REDACTED] stated: "[The petitioner] architected the solutions that are being used each and every day by 190,000 Health Care Providers, Doctors, Hospitals, Pharmacy in California and Drug Manufacturers. He developed systems architecture to fit in the strategy for business as usual and provide seamless operational [sic] to 190,000 customers." According to the Department of Labor's Occupational Outlook Handbook (OOH), available at <http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm#tab-2>, accessed on July 26, 2013, and incorporated into the record of proceeding:

Electronics engineers typically do the following:

- Design electronic components, software, products, or systems for commercial, industrial, medical, military, or scientific applications
- Analyze electrical system requirements, capacity, cost, and customer needs and then develop a system plan
- Develop maintenance and testing procedures for electronic components and equipment
- Evaluate systems and recommend repair or design modifications

- Inspect electronic equipment, instruments, and systems to make sure they meet safety standards and applicable regulations
- Plan and develop applications and modifications for electronic properties used in parts and systems to improve technical performance

does not explain how designing a usable program for a client is a contribution of major significance to electronics engineering. does not assert that other computer scientists, engineers or medical imaging researchers have been influenced by the adoption of this program in California.

On appeal the petitioner provides a letter from , a medical doctor within , dated December 10, 2012. explains that he learned of the petitioner's research from the petitioner at church and ultimately used the petitioner's research as a digestive system specialist. asserts that he improved upon the petitioner's research on design and performance analysis and "further adopted algorithmic optimization and circuit level optimization in order to achieve target HD specification of the paper." One example of a local colleague applying the petitioner's techniques is not evidence of the petitioner's wider impact in the field.

An alien must have demonstrably impacted his field in order to meet this regulatory criterion. While the petitioner is a prolific author who has worked on marketable systems that have multiple clients, the reference letters do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

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 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final

determination regarding an alien's eligibility for the benefit sought. *Id.* Based on the extensive similarities between some of the above letters, USCIS may accord those letters less weight. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Additionally, each letter submitted in support of the petitioner's eligibility claim appears to have been drafted in response to the petitioner's efforts in attaining permanent resident status in the United States. While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. Such independent evidence might include but is not limited to letters from independent industry experts with firsthand knowledge of the petitioner's impact in the field, media coverage, and citations to the petitioner's work.

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

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

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

#### B. Summary

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

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international

acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>4</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

The 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.

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<sup>4</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).