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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:

JUN 06 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 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on December 12, 2011, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a postdoctoral scholar. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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.

At the initial filing of the petition, counsel submitted a cover letter that specifically claimed that the petitioner met three of the regulatory categories of evidence – the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

On June 5, 2012, the director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) and indicated that the petitioner submitted sufficient documentation establishing eligibility for the judging and scholarly articles criteria. Moreover, even though counsel did not claim the petitioner’s eligibility, the director indicated, based on the documentation, that the petitioner failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Furthermore, the director found that the petitioner failed to submit any documentary evidence regarding the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at C.F.R. § 204.5(h)(3)(iii), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). Finally, although counsel specifically claimed the petitioner’s eligibility regarding the original contributions criterion, the director indicated that petitioner did not claim that criterion.

In response, counsel claimed that the director ignored the documentary evidence and his cover letter. Furthermore, counsel asserted:

[T]here is absolutely no legal requirement that petitioner “specifically claim” a category. It is up to the examiner to examine the evidence and see if the criteria for the category have been met. As a matter of course, we are claiming EVERY category.

In the director's decision, the director affirmed that the petitioner met the judging criterion and the scholarly articles criterion. Moreover, the director concluded that the petitioner failed to meet the awards criterion and the original contributions criterion. Furthermore, regarding the leading or critical role criterion, the director stated that the previous request for evidence was in error, and the petitioner did not specifically claim eligibility for that criterion.

On appeal, counsel claims:

Requiring that petitioner can only win a category if that category is "claimed" is a novel substantive requirement. In addition to being novel, the Service nowhere states how or when a petitioner can "claim" a category. Petitioner here maintains that any category for which evidence is offered is "claimed."

Counsel did not indicate how the previously submitted documentation, as well as the additional documentation submitted in response to the request for evidence, met the other categories of evidence at 8 C.F.R. § 204.5(h)(3)(i)-(x). The burden is on the petitioner to establish eligibility for the benefit requested and not on the director to infer or guess the intended criteria. As the petitioner is a postdoctoral scholar, counsel failed to indicate how her occupation would even qualify for the artistic display criterion which is generally reserved for visual artists or the commercial success criterion which is generally reserved for performing artists. Once again, the burden is neither on the director nor the AAO to infer or guess the intended criteria. Moreover, in counsel's cover letter at the initial filing of the petition, in response to the director's request for evidence, and on appeal, counsel exclusively discusses how the documentary evidence relates to the judging criterion, the scholarly articles criterion, and the original contributions criterion; there is no discussion or reference of how the documentary evidence meets or even relates to the other categories of evidence at 8 C.F.R. § 204.5(h)(3)(i)-(x). Even on appeal, counsel does not address any of the other criteria beyond the judging criterion, the scholarly articles criterion, and the original contributions criterion. Furthermore, although the director found that the petitioner failed to meet the awards criterion, counsel did not contest the findings of the director or offer additional arguments beyond generally claiming that all criteria were claimed. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Similarly, regarding the leading or critical role criterion, counsel makes a brief reference at the end of his brief that the petitioner "[i]s a key or person in her institution." However, counsel does not offer any discussion as to how the petitioner qualifies for the criterion or which evidence relates to it. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). Although counsel did not at any point in the proceeding indicate which evidence related to the leading or critical role criterion or how the petitioner qualified for the criterion, the AAO will also consider the petitioner's eligibility for the leading or critical role criterion. If it is counsel's contention that there is other documentary evidence that meets the leading or critical role criterion and it is not discussed in this decision, counsel has never explained what documentation there is or how the evidence relates to that criterion.

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, 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 (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

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).

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.*

On appeal, although the director found that the petitioner only met two of the criteria at the regulation at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), counsel claimed that the director violated both law and Service policy by failing to conduct a final merits determination. As the director found that the petitioner failed to meet at least three of the categories of evidence as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3), a final merits determination is moot. In fact, similar to this case, the Ninth Circuit in the *Kazarian* decision found that the appellant met only two criteria and did *not* conduct a final merits determination. The director is required to conduct a two-part approach only when the director finds that the petitioner meets at least three of the categories of evidence at the regulation at 8 C.F.R. § 204.5(h)(3)(i)-(x). Moreover, as stated above, the petitioner failed to meet at least three criteria on appeal; therefore a final merits determination will not be conducted in this decision.

II. ANALYSIS

A. Evidentiary Criteria

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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation establishing that she minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO concurs with the findings of the director for this criterion.

Accordingly, the petitioner established that she 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 the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

At the initial filing of the petition, the petitioner submitted screenshots from *Google Scholar* reflecting that her article, [REDACTED]

[REDACTED] was cited 22 times, and her article, [REDACTED]

[REDACTED] was cited 9 times. It is noted that in response to the director’s request for evidence, the petitioner submitted additional citations that either occurred after the initial filing of the petition or were cited in draft articles that have yet to be published. Eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner’s eligibility for this criterion. Generally, the number of citations is reflective of the significance of the petitioner’s original findings and that the field has taken some interest in the petitioner’s work. It is not, however, an automatic indicator that the petitioner’s work has been of major significance in the field. In this case, the moderate citation of the petitioner’s two articles is not persuasive evidence that the petitioner’s work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that her articles have been unusually influential, such as articles that discuss in-depth the petitioner’s findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner’s documentary evidence is not reflective of having a significant impact on the field. Merely submitting documentation reflecting that the petitioner’s work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner’s work has been of major significance in the field. The petitioner failed to establish how her findings cited by others have significantly contributed to her field.

Furthermore, the petitioner’s evidence includes documentation that she has presented her findings at various scientific conferences and retreats, such as the [REDACTED] and the [REDACTED] along with numerous other participants. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner’s conference presentations

have been frequently cited by independent researchers or have otherwise significantly impacted the field.

Again, while the presentation of the petitioner's work demonstrates that it was shared with others and may be acknowledged as original contributions based on the selection of them to be presented, it is not persuasive evidence that it is of major significance in the field as a whole and not limited to the engagements in which they were presented.

A review of the record of proceeding reflects that the petitioner submitted recommendation letters. In this case, while the recommendation letters praise the petitioner for her work, they fail to indicate that her contributions are of major significance in the field. The letters generally indicate the petitioner's findings from her work but do not indicate the significance of the petitioner's findings on the field. For instance, Dr. [REDACTED] stated that the petitioner's "data showed the role of nitric oxide signaling in regulating the migration of interneurons in a mouse model system." While Dr. [REDACTED] demonstrated the petitioner's original contribution, he offered no evidence showing that her research has been of major significance in the field. Likewise, Dr. [REDACTED] stated that the petitioner "has shown that reducing the cadherin levels can modulate the behavior of tumor cells by increasing its migratory and invasive properties." Although Dr. [REDACTED] indicated that this is a significant contribution, he failed to provide any justification for his opinion or any explanation as to how it is an original contribution of major significance in the field.

Almost all of the petitioner's recommendation letters discuss the potential impact of the petitioner's work in the field rather than how her research and findings have already impacted or influenced the field, so as to reflect original contributions of major significance in the field. For example: the petitioner's "work suggests that activation of [REDACTED] [emphasis added]," and [REDACTED] [emphasis added]" (Dr. [REDACTED]; the petitioner [REDACTED] [emphasis added]," and the petitioner's "other projects . . . will overall increase our understanding of brain development [emphasis added]" (Dr. [REDACTED]; the petitioner's cancer research "has the *potential* to save many lives [emphasis added] (Dr. [REDACTED]; the petitioner's "research work *suggests a very promising approach* to solve mental illnesses associated with the migration of neurons [emphasis added] ([REDACTED]; and the petitioner's research "*could potentially* be a better therapeutic option to prevent breast cancer metastasis [emphasis added]," "has the *potential* to save many lives [emphasis added]," and "*will* help in further understanding of the complex disease process of Cancer and *will* also advance the field of drug development [emphasis added] (Dr. [REDACTED]

Many of the recommendation letters noted the petitioner's findings and original contributions but also stated that her work was in the process of being published in professional journals reflecting that her work has yet to impact or influence the field. For instance: the petitioner "has only been little more than three years in the laboratory, so we have *not yet published* several of these fundamental discoveries [emphasis added] (Dr. [REDACTED]; "[h]er scientific results are *in the process* of being prepared for submission for evaluation as publications in prestigious journals [emphasis added]" (Dr. [REDACTED]; "[h]er present work *will* be soon submitted for research publication [emphasis added] (Dr. [REDACTED]; "[h]er data *will* soon be submitted to the top journals in the neuroscience

research field [emphasis added] (Dr. [REDACTED] “[a]ll her research work is either *in submission* or *in preparation* for publication soon [emphasis added] (Dr. [REDACTED]; and “[o]ur collaborative paper has *now been submitted* to the highly prestigious journal, [REDACTED] for publication [emphasis added]” (Dr. [REDACTED]).

As indicated above, the recommendation letters reflect that the petitioner has made original contributions based on her research. The letters fail to indicate, however, that her contributions are of major significance in the field. A petitioner cannot have a petition approved under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner’s research, while original, is still ongoing and that the findings she has made have not reached a level that can be considered of major significance in the field. While the originality of the petitioner’s research is not disputed, as well as the fact that the field has taken some notice of her work, the actual present impact of the petitioner’s work has not been established to be of major significance. Rather, the petitioner’s references appear to speculate about how the petitioner’s findings may affect the field at some point in the future. Eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner’s research and the impact that may result from her work, rather than how her past research already qualifies as a contribution of major significance in the field. The assertion that the petitioner’s research results are likely to be influential is not adequate to establish that her findings are already recognized as major contributions in the field. While the letters submitted praise the petitioner’s research and work as both novel and of great potential interest, the fact remains that any significant impact that results from the petitioner’s research will likely occur in the future.

Furthermore, the recommendation letters highly praise the petitioner for her skills and talents. For instance: the petitioner “has unique scientific skills sets” and “unique attributes” (Dr. [REDACTED] the petitioner “has skills and talents that few others have” (Dr. [REDACTED]; and the petitioner has a “unique combination of technical skills and talents that very few others have” (Dr. [REDACTED]. However, none of the letters indicated how the petitioner’s skills or personal traits are original contributions of major significance in the field. Merely having a unique skill set is not a contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at the level of major significance. Assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 (Comm’r 1998).

While those familiar with the petitioner’s work generally describe it as “significant,” “extraordinary,” and “original,” there is insufficient documentary evidence demonstrating that the petitioner’s work is of major significance in the field. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. Vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner’s

contributions have already influenced the field are not persuasive evidence. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without 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. 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.).

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the petitioner failed to meet the plain language of this regulatory criterion.

Accordingly, the petitioner failed to establish that she meets 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation establishing that she minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, the AAO concurs with the findings of the director for this criterion.

Accordingly, the petitioner established that she meets this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

A review of the record of proceeding reflects that the only evidence submitted by the petitioner that remotely relates to this criterion is the previously discussed recommendation letters from Dr. [REDACTED]. Dr. [REDACTED] indicated that the petitioner joined his laboratory at the [REDACTED] as a postdoctoral fellow over three years ago and “in [his] laboratory, [the petitioner] lead some very exciting projects” and “was a key member in numerous other neuroscience projects in the laboratory either individually or in collaboration with other researchers.” However, Dr. [REDACTED] failed to provide any further details regarding the petitioner’s role, so as to demonstrate that her role was leading or critical. Simply indicating that the petitioner “lead” or was a “key member” is insufficient to establish eligibility for this criterion without providing evidence that the petitioner has performed in a leading or critical role. 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. at 1108, *aff’d*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. Dr. Rubenstein failed to compare, for example, the role of the petitioner to the other postdoctoral fellows and researchers, so as to reflect that her role was leading or critical. In fact, it appears that Dr. [REDACTED] performed in a leading or critical role compared to the petitioner, who worked under Dr. [REDACTED] in his laboratory. Moreover, Dr. [REDACTED] provided no evidence establishing the petitioner’s role at the [REDACTED] as a whole rather than as a subordinate to Dr. [REDACTED] in the Department of Psychiatry at the university.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the petitioner performed in a leading or critical “for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish eligibility for every element of the criterion. In the case here, the petitioner failed to submit any documentary evidence demonstrating that the [REDACTED] as well as the Department of Psychiatry, has a distinguished reputation.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that the petitioner’s role at the [REDACTED] meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires the petitioner to perform in a leading or critical role for more than one organization or establishment. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(1)(2) requires a single degree rather than a

combination of academic credentials). Here, the record of proceeding only contains evidence reflecting the petitioner's role with one organization – the [REDACTED]

In response to the director's request for evidence, the petitioner submitted a letter from Dr. [REDACTED] who stated that the petitioner joined his laboratory at the [REDACTED] "in early 2012 as the lead researcher," and "[s]he is a leading and key member of my laboratory." The petitioner also submitted a job confirmation letter indicating that she began working at the university on February 13, 2012. The petition was filed on December 12, 2011, and eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Notwithstanding, similar to Dr. [REDACTED] letter, Dr. [REDACTED] failed to provide any further information regarding the petitioner's role in the laboratory or at the university to indicate that the petitioner's role is leading or critical rather than simply indicating that she is "a leading and key member" of his laboratory. 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. at 1108, *aff'd*, 905 F. 2d at 41; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. The petitioner also failed to submit any documentary evidence establishing that the [REDACTED] has a distinguished reputation.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner failed to meet the plain language of this regulatory criterion.

Accordingly, the petitioner failed to establish that she 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.

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.² Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

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

ORDER: The appeal is dismissed.

² 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).