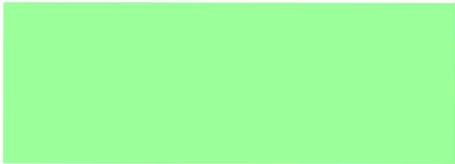




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 20 2013** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, 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 in the sciences. The director determined that the petitioner had not met the requisite criteria 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 director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, counsel asserts that the petitioner meets the regulatory category of evidence at 8 C.F.R. § 204.5(h)(3)(v). For the reasons discussed below, the AAO will uphold the director's decision.

## 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. 723 101<sup>st</sup> 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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> 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.*

## II. ANALYSIS

### A. Evidentiary Criteria

This petition, filed on November 30, 2012, seeks to classify the petitioner as an alien with extraordinary ability as a transportation engineer. The petitioner earned his Doctor of Engineering degree in Civil Engineering from [REDACTED] in 2008. At the time of

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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).

filing the petition, the petitioner was working as a Transportation Engineer IV with the Traffic Design Engineering Division, [REDACTED], [REDACTED]. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<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 petitioner submitted evidence demonstrating that he peer-reviewed manuscripts for [REDACTED], [REDACTED], [REDACTED], the [REDACTED], and the [REDACTED]. The petitioner also submitted documentation showing that he served as a Session Chair for [REDACTED] at the [REDACTED]. In addition, the petitioner submitted evidence indicating that he served as a Session Chair for [REDACTED] at the [REDACTED] and that he was a reviewer for the [REDACTED]. Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

The director's decision determined that the petitioner failed to establish eligibility for this regulatory criterion. 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.] 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing his work.

[REDACTED], Professor and Founding Director, [REDACTED], [REDACTED], states:

I have known [the petitioner's] research since 2005, when he joined [REDACTED] to pursue Doctor of Engineering degree and I was his advisor.

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<sup>2</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

\* \* \*

[The petitioner's] research work in highway alignment design resulted in development of one of the currently available world's best methods of evaluating and designing highway alignments. He developed the multi-object optimization technique and implemented in the highway alignment design, which provides option of separating different highway design objectives such as environmental impact, economic impact, social impact, etc. while the alignment is being optimized. It is also one of the unique optimization methods, where objective values are discrete and not mathematically related to the decision variables. [The petitioner's] state-of-the-art method provides planners, designers and decision makers a powerful tool to generate highway alignment alternatives, compare the generated alternatives and choose one based on project requirement. The available highway alignment design methods developed by others do not have such capability and require considerable amount of time and effort to obtain few workable alternatives. . . . [The petitioner's] original research and findings have been published in prestigious international journals, such as [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted].

While [redacted] asserts that the petitioner "developed the multi-object optimization technique" and that it is "one of the currently available world's best methods of evaluating and designing highway alignments," he does not provide specific examples of how the petitioner's technique has been widely implemented as a design tool for highways or that it otherwise equates to a scientific contribution of major significance in the field. In addition, [redacted] states that the petitioner has published his original research and findings in prestigious journals, but there is no documentary evidence showing that the petitioner's specific work rises to the level of original contributions of major significance in the field.

[redacted] further states:

In the field of traffic operations, [the petitioner] has greatly contributed to the development of methods analyzing unconventional intersection and interchange design.... [The petitioner] developed a comprehensive method that provides massive opportunity to transportation planners in evaluating unconventional intersections and interchanges such as jughandle, quadrant, superstreet intersections, and diverging diamond, single point urban interchanges. . . . This method does not require expensive software, great deal of expertise in using the software, and detail understanding of the traffic operations. [The petitioner's] findings have been adopted and implemented by the greater scientific community in the field. For instance, the [redacted] has adopted the [redacted] tool developed by [the petitioner]. The [redacted] is developing a Java based computer program implementing the methodology developed by [the petitioner]. Also, [the petitioner's] research on unconventional intersection and interchange analysis have been presented at

the [redacted] - [redacted] and [redacted] organized by [redacted]. He has co-authored a couple of papers in this subject, such as [redacted].

[redacted] comments that the petitioner developed a method that assists transportation planners in evaluating unconventional intersections and interchanges such as [redacted] and [redacted], single point urban interchanges, but [redacted] fails to provide specific examples of how the petitioner's method is being utilized at a level indicative of a scientific contribution of major significance in the field. While the petitioner's employer, the [redacted] adopted the [redacted] developed by the petitioner, there is no evidence demonstrating that the tool was of major significance in the field as a whole. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to his employer or its collaborative projects. In addition, while [redacted] states that the petitioner has published and presented his research, there is no evidence showing that the petitioner's findings in the field of traffic operations were frequently cited by independent researchers or that they otherwise constitute contributions of major significance in the field.

[redacted] continues:

[The petitioner's] another major prolific area of research is highway infrastructure maintenance. He has developed a [redacted] which can analyze multiple type of infrastructure elements and come up with a maintenance schedule that meets the fiscal budget constraint and improves service life of the elements.

[redacted] comments that the petitioner "developed a [redacted]" but [redacted] does not provide specific examples of how the petitioner's model has been extensively utilized by engineers for highway infrastructure maintenance projects or that it was otherwise of major significance in the field.

[redacted], Professor, [redacted], [redacted], states:

As the first author, [the petitioner] published his pronounced research achievement on highway alignment design in the [redacted]. As the Editor-in-Chief of [redacted] I can testify to the quality of [the petitioner's] paper and its influence on the field. The method proposed in this paper enhances the existing highway alignment optimization technique and makes it more versatile in using the available connectivity information of the start and end points of the proposed optimized highway alignment. It is also an outstanding tool to find the

highway alignment of a bypass to avoid traffic congestion in downtown city areas. Because [the petitioner] included a traffic assignment model in this methodology, the developed model has provided a better view of the traffic flow in the new alignment as well as in the existing highway network. This has substantially contributed to our research effort to help traffic engineers during the alignment design process, to design traffic control systems most appropriate and efficient for the new highway. [The petitioner's] paper has been selected to be included in a new book titled '[REDACTED]', a volume to the book series [REDACTED] to be released in publisher's 2013 copyright year.

[REDACTED] comments on the petitioner's work that was published in [REDACTED] but the petitioner failed to submit citation evidence demonstrating that his article was frequently cited by independent researchers or that it was otherwise of major significance in the field. 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. In addition, there is no evidence showing that the highway alignment methodology proposed by the petitioner has been utilized by traffic engineers throughout the field at a level indicative of a contribution of major significance. [REDACTED] also states that the petitioner's paper has been selected to be included in a new book entitled '[REDACTED]' that is "to be released in publisher's 2013 copyright year." Thus, any impact resulting from the publication of this book post-dates the filing of the petition. 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.

[REDACTED] further states:

[The petitioner] has created marvelous solutions to major [REDACTED] problems. Both his extraordinary expertise and profound knowledge are evidenced in his papers published by well-recognized journals. For instance, his paper was published in 2011 [REDACTED] issue. In the classical [REDACTED] problem, the best 3-dimensional highway route is sought between two end points, subject to user preferences.... In this paper, [the petitioner] brilliantly departed from the traditional [REDACTED] problem and investigated a road-users' preference in seeking a new highway route between his/her Origin-Destination (O-D) pair as opposed to previously available routes between those O-D pairs. . . . He designed a [REDACTED] for solving the optimization problem. This new methodology by [the petitioner] has paved the way for promising new road design and bypass construction because benefit maximization and cost minimization can finally be performed simultaneously while attaining user equilibrium. Moreover, this new methodology is in the process of being employed and further tested in various real-world road planning and design projects. [The petitioner's]

remarkable accomplishment in highway alignment optimization is indeed an original contribution of major significance to the field of transportation engineering.

asserts that the petitioner's "has paved the way for promising new road design and bypass construction" and that the petitioner's "methodology is in the process of being employed and further tested in various real-world road planning and design projects," but fails to provide specific examples of how the petitioner's work has already been implemented in the transportation engineering field at a level indicative of contributions of major significance. As previously discussed, eligibility must be established at the time of filing. 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. In addition, while asserts that the petitioner's "accomplishment in highway alignment optimization is indeed an original contribution of major significance to the field of transportation engineering," 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*, No. 95 civ 10729, 1997 WL 188942 at \*1, \*5 (S.D.N.Y.).

continues:

It is noteworthy that [the petitioner] has discussed his outstanding research on in his doctoral dissertation and subsequent works. In this area of research, he developed an excellent that has exceptional ability of optimizing objectives that cannot be mathematically formulated and related to the decision variables. He also developed a unique and outstanding methodology which could be used in solving many real-world problems such as railroad yard location, station location, highway infrastructure maintenance, etc.

While asserts that the petitioner's methodology "could be used in solving many real-world problems," there is no evidence demonstrating that petitioner's work has been widely implemented in the transportation industry or that his work was otherwise of major significance in the field at the time of filing the petition. Rather than providing specific examples of how the petitioner's work has significantly impacted the field, appears to speculate about how the petitioner's findings may affect the field at some point in the future. Once again, 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.

states that the petitioner "has published his research on in top-ranked journals (such as the ) and prestigious conferences (such as and the conference on ." With regard to and comments regarding the petitioner's published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles.

8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications 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 at 1036. In 2010, the *Kazarian* court reaffirmed its holding 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. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

The petitioner submitted citation evidence reflecting an aggregate of 32 cites to his body of research work. Ten of the submitted citations are self-cites by the petitioner’s coauthor [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The AAO notes that the number of independent citations per article is minimal to moderate. For instance, the submitted documentation reflects that none of the petitioner’s articles was independently cited to more than ten times. Specifically:

1. “[REDACTED]” was independently cited to ten times (plus six self-citations by [REDACTED]);
2. “[REDACTED]” was independently cited to zero times (plus two self-citations by [REDACTED]);
3. “[REDACTED]” was independently cited to three times;
4. “[REDACTED]” was independently cited to twice;
5. “[REDACTED]” (petitioner’s Ph.D. thesis) was independently cited to twice;
6. “[REDACTED]” was independently cited to three times;
7. “[REDACTED]”

[REDACTED] was independently cited to once (plus two self-citations by [REDACTED]; and

8. [REDACTED] (*Proceedings of the [REDACTED] decision making*) was independently cited to once.

Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published work 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." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. It is not, however, an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the minimal to moderate number of independent cites per article for his research work is indicative of original scientific contributions of major significance in the field.

[REDACTED], Associate Professor and Graduate Program Coordinator, [REDACTED], states:

[The petitioner] developed the multi-objective optimization technique and implemented in the highway alignment design. His developed model provides option of separating different highway design objectives such as construction cost, environmental impact, economic impact, social impact etc., while the alignment is being optimized. . . . His state-of-the-art method provides planners, designers and decision makers a powerful tool to generate highway alignment alternatives and compare the generated alternatives based on project requirements. . . . [The petitioner's] original research and findings have been published in [REDACTED] and [REDACTED].

[REDACTED] states that the petitioner "developed the [REDACTED]" but [REDACTED] fails to provide specific examples indicating that the petitioner's work has substantially impacted the transportation engineering field or that his work was otherwise of major significance in the field. According to the citation evidence submitted by the petitioner, none of the petitioner's articles in [REDACTED], [REDACTED], and [REDACTED] had been independently cited to more than ten times per article. The petitioner has not established that this minimal to moderate level of citation is consistent with or indicative of contributions of major significance in the field.

[REDACTED] further states:

[The petitioner] developed a comprehensive method that provides massive opportunity to transportation planners in evaluating [REDACTED], [REDACTED], [REDACTED] and

[REDACTED], [REDACTED] . . . The analysis process developed by [the petitioner] takes into account the traffic volume of the critical movements and adds them logically to come up with a comparable critical lane volume. The developed method is outstanding and does not require expensive software, great deal of expertise and in-depth understanding of the traffic operations. [The petitioner's] findings have been adopted and implemented by the [REDACTED] and the [REDACTED]. Also, his research on unconventional intersection and interchange analysis has been presented in the [REDACTED] and [REDACTED] organized by [REDACTED]

While the petitioner's employer, the [REDACTED] adopted the methodology developed by the petitioner, and the [REDACTED] at the [REDACTED] developed a computer application based on the analysis procedure introduced by the petitioner, there is no evidence demonstrating that the petitioner's work substantially impacted the transportation engineering field beyond his projects in Maryland or that his work was otherwise of major significance in the field as a whole. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to his employer or its collaborative projects. In addition, [REDACTED] states that the petitioner's research on unconventional intersection and interchange analysis has been presented in the [REDACTED] and the [REDACTED], but there is no evidence showing that the petitioner's presented findings were frequently cited by independent researchers or that his findings otherwise equate to contributions of major significance in the field. [REDACTED] also lists the petitioner's published articles entitled "[REDACTED]", "[REDACTED]", "[REDACTED]", and "[REDACTED]". The petitioner failed to submit a citation history for the preceding three articles or other documentary evidence demonstrating that his findings were of major significance in the field.

[REDACTED], Professor, [REDACTED] states:

As an independent member of his dissertation committee, I am familiar with [the petitioner's] outstanding research on [REDACTED]

\* \* \*

[The petitioner's] original research and critical findings on highway alignment design have considerably influenced the research community and the transportation industries. The [REDACTED] he has developed and implemented in [REDACTED] is unique and very effective. . . . [The petitioner's] innovative research on [REDACTED] has added a new dimension to the [REDACTED]. His new method has the ability to keep the design

objectives separate during optimization process and yield multiple competitive solutions as required by practitioners. This groundbreaking method has demonstrated its ability to save substantial amounts of time and money, as well as being environmentally friendly.

\* \* \*

[The petitioner] has also played a leading role in the research area of highway infrastructure maintenance scheduling. He has published his research work in [redacted] an internationally acclaimed journal. His work has been referred by [redacted] as the noted research paper for research work on the [redacted]. Many independent researchers have cited his paper in their research publications. I have also cited his research on highway infrastructure maintenance scheduling published in [redacted] in one of my papers . . . .

[redacted] describes the petitioner's [redacted] as "groundbreaking" and adding "a new dimension to the [redacted]" but [redacted] fails to provide specific examples of how the petitioner's technique has substantially influenced the research community, significantly impacted the transportation industry, or otherwise constitutes an original contribution of major significance in the field. 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). In addition, while [redacted] states that he cited to the petitioner's work in [redacted] there is no documentary evidence showing that the petitioner's findings were of major significance in the transportation engineering field as a whole. According to the citation evidence submitted by the petitioner, his article in [redacted] has been independently cited to ten times since its publication in 2007. The petitioner has not established that this moderate level of citation is indicative of a contribution of major significance in the field.

[redacted], a principal transportation planner and engineering consultant, states:

I know [the petitioner] from our mutual participation in the [redacted] funded research project titled "[redacted]"

\* \* \*

[The petitioner] has very extensive knowledge and experience in traffic operations, highway geometrics, data collection techniques for traffic engineering studies, traffic simulation software and research related to transportation engineering. . . . [The petitioner] has outstanding knowledge and experience in traffic simulation software.

\* \* \*

[The petitioner] is exceptionally well versed with the global positioning system (GPS), Bluetooth and video monitoring systems used in traffic engineering data collection. . . . His outstanding research skill is very helpful to the research panel.

\* \* \*

The [redacted] research panel is benefitted with [the petitioner's] outstanding knowledge, experience and research experience in traffic operations and safety. While working for [redacted], he acquired vast experience in traffic operations and safety. [The petitioner] has significant knowledge in statistics and used in many of his research work. . . . [The petitioner's] outstanding knowledge in traffic operations is facilitating the research panel to select and review the impact of work zone traffic management strategy on traffic operations. He further assists in identifying how the work zone traffic management strategy can affect the crash pattern within the work zone.

[redacted] comments on the petitioner's research skills, experience in the field, and technical knowledge, but [redacted] fails to explain how the petitioner's work was both original and of major significance in the field. Assuming the petitioner's knowledge and 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 Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

[redacted] Professor and Director of the [redacted], states:

I have met [the petitioner] in several project meetings held at [redacted], observed his critical role and inputs into the research projects. My project team has adopted [the petitioner's] [redacted] prototype for developing a user-friendly computer application intended for the traffic-engineering professionals. I am intrigued by [the petitioner's] innovativeness and outstanding ability in developing the prototype analysis tool.

\* \* \*

[redacted] is a unique traffic engineering analysis tool for [redacted] including [redacted], [redacted] and [redacted]. [The petitioner] developed the [redacted], out of which the diverging diamond is an innovative type of interchange design. . . . The critical lane volume based analysis procedure developed by [the petitioner] is easy to use and less time consuming. More importantly, this method leads to significant savings in traffic engineering analysis cost. Moreover, with this tool, highway planners can easily compare the three different types of [redacted] and choose the one with the lowest critical lane volume for

detailed study. My research team has adopted the critical lane volume based analysis procedure introduced by [the petitioner] and developed a full functional computer application for the traffic-engineering professionals. . . . So far, [the petitioner] has presented his research findings on this method in the [redacted] local chapter meeting, and [redacted] . . . . His original research paper titled “[redacted]” has been accepted for presentation in the prestigious [redacted] to be held from January 13 to 17, 2013. To put it into perspective, each year more than 10,000 transportation researchers and professionals all over the world attend this conference.

[redacted] comments that his project team adopted the petitioner’s [redacted] prototype, but [redacted] fails to provide specific examples of how the petitioner’s prototype is being utilized in the traffic engineering field at a level indicative of a contribution of major significance. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to projects in the state of Maryland or the petitioner’s local collaborators. In addition, [redacted] states that the petitioner has presented his research findings on the method in the [redacted] local chapter meeting and the [redacted]. The AAO notes that many professional fields regularly hold meetings 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 original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner’s specific conference presentations are frequently cited by other research engineers, have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While presentation of the petitioner’s work demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, the AAO is not persuaded that presentations of the petitioner’s work at various meetings and symposia are sufficient evidence establishing that his work is of “major significance” in the field as a whole and not limited to the engagements in which his work was presented. The petitioner has failed to establish, for example, the impact or influence of his presentations beyond those in attendance so as to establish that his work was of major significance in the field.

[redacted] further states that the petitioner’s research paper “[redacted]” has been accepted for presentation in the prestigious [redacted] to be held from January 13 to 17, 2013.” The preceding meeting and presentation occurred subsequent to the petition’s November 30, 2012 filing date. Thus, any impact resulting from the petitioner’s presentation post-dates the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 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. Regardless, there is no documentary



[The petitioner] has also played a valuable role in research related to highway safety and made substantial contributions on integrating highway design with [REDACTED]. . . . I managed [REDACTED] development from 1997-2006. [REDACTED] is used to identify the inconsistent sections of a highway alignment that may pose safety issues to the motorist. . . . It is a sophisticated process and adopting the process will make highways safer to all motorists. [The petitioner's] model can replace the manual iterative process with his automated computer based method. He has presented his research work in the conference, [REDACTED], and it was subsequently selected for publication as a book chapter in the conference proceedings.

[REDACTED] asserts that the petitioner's "model can replace the manual iterative process with his automated computer based method" and that the petitioner's "process will make highways safer to all motorists," but [REDACTED] fails to provide specific examples of how the petitioner's original methodology has already been implemented throughout the transportation industry at a level indicative of a contribution of major significance in the field. Once again, 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. In addition, while [REDACTED] states that the petitioner "presented his research work in the conference, [REDACTED] and that the petitioner's work was "subsequently selected for publication as a book chapter in the conference proceedings," there is no documentary evidence showing that the petitioner's published and presented work was frequently cited by independent researchers or was otherwise of major significance in the field.

[REDACTED] Director of Business Development, [REDACTED], states:

I had been the Director of [REDACTED] till June 2012, and I have personal knowledge of [the petitioner] . . . since he joined [REDACTED] in August 2007.

\* \* \*

[REDACTED] offered [the petitioner] the position of Senior Transportation Engineer in August 2007. He played a critical role in the [REDACTED] research effort together with the [REDACTED] to develop analysis tools for analyzing unconventional intersections and interchanges. Due to his extraordinary expertise and creativity, he developed the first prototype of [REDACTED] which has been adopted by the [REDACTED] for office-wide use. This tool can analyze [REDACTED] such as regular [REDACTED] and [REDACTED] and provide critical lane volume based level of service information for each interchange type.

\* \* \*

[The petitioner] is the first to perfectly blend traffic engineering with [REDACTED]. His research work titled "[REDACTED]"

[redacted] is the perfect example where highway alignment is designed based on traffic distribution between existing highway and the newly designed highway. . . . [The petitioner] innovatively applied the user equilibrium model, a type of traffic assignment model, to develop a new methodology for [redacted] that maximizes the use of the new highway while keeping the impact and cost to the minimum level. In fact, [the petitioner] is a pioneer to successfully use the user-equilibrium model in the [redacted]. . . . The methodology developed by [the petitioner] in this research is groundbreaking because it can be used to optimize the [redacted] based on maximization of traffic distribution between the existing and newly designed highway alignment, as well as affording the opportunity to further improve and maximize the utility of the newly designed highway.

[redacted] states that the petitioner developed the first prototype of the [redacted] but there is no evidence showing that the petitioner's prototype has been widely utilized in the transportation industry or was otherwise of major significance in the field. In addition, [redacted] comments on the petitioner's article entitled "[redacted]." There is no evidence showing that the petitioner's article is frequently cited by independent researchers or that his findings otherwise equate to original contributions of major significance in the field. Moreover, while [redacted] states that the petitioner's methodology "can be used to optimize the highway alignment design based on maximization of traffic distribution" and can provide "the opportunity to further improve and maximize the utility of the newly designed highway," there is no evidence demonstrating that the petitioner's work is already recognized as of major significance in the field. As previously discussed, 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.

[redacted], Assistant Professor, Department of Civil Engineering, [redacted], states:

[The petitioner] has developed a [redacted] that can optimize objective functions, which are not mathematically related to the decision variables. On top of that, his model can generate a Pareto-optimal front for two or more objective functions. This is a major breakthrough in the area of optimization. He has applied the developed method in [redacted], which improved the accuracy of the results obtained and saved analysis time significantly.

\* \* \*

In recent years, [the petitioner] has published numerous high quality research papers on highway alignment design in top-notch international journals such as [redacted], [redacted], and reputed conferences related to transportation engineering. Particularly, this year (2012) he presented a research paper in [redacted] which is one of the impressive research-work on three dimensional [redacted]

\* \* \*

[The petitioner] is equally brilliant in traffic engineering operations analysis, unconventional intersection and interchange design and transportation infrastructure. He has published his outstanding research work on these subjects in several reputed international journals and international conferences. For instance, his paper titled "[redacted]", published in [redacted] is a highly regarded research work in the area of highway infrastructure maintenance. Other researchers have cited this paper favorably. The other paper titled "[redacted]" published in [redacted] is also a significant contribution in the area of traffic operations.

[redacted] asserts that the petitioner's [redacted] "is a major breakthrough in the area of optimization," but [redacted] fails to provide specific examples indicating that the petitioner's work has substantially impacted the transportation engineering field or that his work was otherwise of major significance in the field. As previously discussed, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. at 15. In addition, [redacted] comments on the petitioner's conference presentations and his articles in [redacted], [redacted], [redacted], and [redacted].

According to the citation evidence submitted by the petitioner, none of his publications or presentations had been independently cited to more than ten times per article. The petitioner has not established that the minimal to moderate level of citation of his work rises to the level of contributions of major significance in the field.

[redacted], Street Transportation Director and City Engineer for the [redacted], states:

I have served with [the petitioner] on a panel to provide technical oversight for a [redacted] sponsored research project titled "[redacted]"

\* \* \*

[The petitioner] has a very rare combination of extensive skill and knowledge in traffic operations and highway geometrics. The [redacted] research project that [the petitioner] is involved with requires experience in roundabout traffic operations, geometrics, latest technologies for data collection, and an understanding of the framework to conduct research. His exceptional research experience and technical expertise are reflected through his participation in panel meetings.

\* \* \*

[The petitioner] also made original contributions of major significance in [REDACTED]. He has developed a [REDACTED] technique that considers design objectives such as environmental impact, construction cost, impact to commercial property, and other factors to obtain an optimum highway alignment. The model developed through this process generates multiple working alternatives for comparison and provides enormous opportunity to the decision makers and stakeholders to review and select an alignment that satisfies their expectations and needs. This is a substantial advancement to the present practice of [REDACTED] and software used. [The petitioner] has published his outstanding research in respected journals and conferences.

[REDACTED] comments on the petitioner's "rare combination of extensive skill and knowledge in traffic operations and highway geometrics" and his "experience in roundabout traffic operations, geometrics, and latest technologies for data collection," but assuming the petitioner's skills and experience are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. As previously discussed, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. at 221. In addition, [REDACTED] asserts that the petitioner's [REDACTED] "is a substantial advancement to the present practice of highway alignment design," but [REDACTED] fails to provide specific examples indicating that the petitioner's work has been widely utilized throughout the transportation engineering field or that his work was otherwise of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered by both the director and the AAO. 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). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters 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 795-796; *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"). Thus, the content of the references' 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 that one would expect of a transportation engineer who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

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

The petitioner has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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 has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>3</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

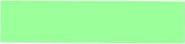
The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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<sup>3</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).

(b)(6)



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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.