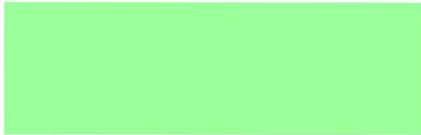




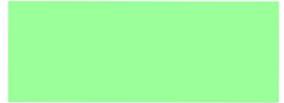
U.S. Citizenship
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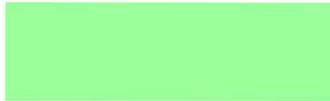


DATE: **MAR 22 2013**

Office: TEXAS SERVICE CENTER

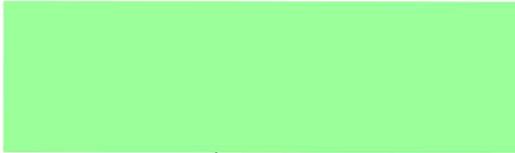


IN RE: Petitioner:
Beneficiary:



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 business as a policy analyst. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his 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 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.

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii) – (vi). Counsel also requests that "should the Administrative Appeals Office agree with the Service's handling of the above criteria, the petitioner would like the Service to consider [the petitioner's] entire submission" as comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). 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 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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.*

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).

II. ANALYSIS

A. Evidentiary Criteria²

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. The AAO notes that the petitioner did not initially claim eligibility for this regulatory criterion. The director concluded that the articles submitted for this criterion in response to the director's request for evidence were either not about the petitioner or did not appear in professional or major trade publications or other major media.

The petitioner submitted two articles in [REDACTED]

With regard to the latter article, the petitioner submitted only the first page of the three-page article. Further, the English language translation accompanying the latter article was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* The petitioner also submitted information from [REDACTED] demonstrating that [REDACTED] is a form of major media. While the preceding articles in [REDACTED] include some quotes from the petitioner, they are not about him. Instead, the articles are about a [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act (requiring evidence of published material simply "about the alien's work").

The petitioner submitted an [REDACTED] article by [REDACTED]

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

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) and posted on the [REDACTED] but there is no documentary evidence showing that [REDACTED] qualify as professional or major trade publications or other major media. Regardless, the [REDACTED] article is not about the petitioner and only mentions him in passing. Instead, the article is about the [REDACTED]

The petitioner submitted an article entitled [REDACTED] that was posted at [REDACTED] but the date and author of the material were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media. In addition, the material is not about the petitioner. Instead, the material is about an article on [REDACTED] As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien” relating to his work rather than simply about the petitioner’s work.

The petitioner submitted a [REDACTED] article entitled [REDACTED] that was posted at [REDACTED] but the article is not about the petitioner. Instead, the article is about [REDACTED] Further, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article entitled [REDACTED], but author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The [REDACTED] article discusses [REDACTED] by the petitioner. The article is clearly not about the petitioner and instead focuses on the [REDACTED] The petitioner also submitted information about [REDACTED] that states: [REDACTED]

The preceding information lacks circulation data for [REDACTED] There is no evidence showing the distribution of [REDACTED] relative to other media to demonstrate that it qualifies as a “major” trade publication or some other form of “major” media.

The petitioner submitted a [REDACTED] article entitled [REDACTED] that was posted at [REDACTED], but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is not about the petitioner. Instead, the article is about [REDACTED] Further, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner's evidence included additional articles not specifically mentioned by counsel on appeal. The AAO, therefore, considers the issue of these articles to be abandoned. *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). Regardless, none of the additional articles meet all of the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, the remaining articles were deficient in that they did not include a date or an author, they were not about the petitioner, they lacked a full English language translation, or they lacked evidence that they were published in professional or major trade publications or other major media.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The 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.

In the director's decision, he 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 scholarly or business-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).

On appeal, counsel points to various letters of support discussing the petitioner's work.

[REDACTED] states:

[The petitioner's] advice on [REDACTED] was incredibly important for [REDACTED] [The petitioner] came here to [REDACTED] and brought up very important points currently incorporated in the [REDACTED] [REDACTED] Other consultants were brought along to opine on the [REDACTED] But [the petitioner's] points were critical to the very standing of the [REDACTED]

One of the main points that [the petitioner] alone brought up was the [REDACTED]

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[redacted]
petitioner] was the first one who brought that up. His ideas are always apart from any other consultant, expert or consulting firm.

As one can clearly see from the [redacted]
[redacted]

While [redacted] states that the petitioner provided advice on [redacted] there is no documentary evidence showing that the petitioner's argument against income limits on who can purchase coverage was an "original" concept in the insurance business and was of major significance to the field. Further, there is no empirical evidence showing that utilization of [redacted] increased substantially as a result of the petitioner's original work or that his concepts otherwise equate to original business-related contributions of major significance to the field.

[redacted] President, National Association of the Private Company, states:

I . . . invited [the petitioner] to [redacted] to testify in front of our national congress on the issues of Public Private Partnerships, (PPPs) because of his solid reputation on this topic. He is particularly strong on the topic of Insurance and Financial Guarantees for PPPs.

PPPs are government concessions to private companies that want to build roads, ports, hospitals and other infrastructure assets. . . . [The petitioner], as a top insurance expert, is very respected on this PPP niche field as well.

[redacted]
* * *

[redacted] on terms of financial guarantees to back up infrastructure projects. His knowledge in insurance and financial guarantees for large infrastructure projects can help us write a good PPP law.

[The petitioner] has presented also to the socio economic commission, a group of politicians and civil society representatives, which have a say on final statutes drafting.

His presentation had very large repercussion in the media, including the main newspaper of the country: [REDACTED]

In brief, I strongly recommend [the petitioner] as an expert on [REDACTED]

[REDACTED] describes the petitioner as knowledgeable “in insurance and financial guarantees for large infrastructure projects” and as “an expert on insurance and financial guarantees for PPPs,” but [REDACTED] fails to provide examples of specific financial concepts originated by the petitioner that were of major significance to the field. Assuming the petitioner’s knowledge and expertise 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). Significantly, unique knowledge and experience do not even qualify an alien for a waiver of the alien employment certification process in the national interest under a lesser classification set forth at section 203(b)(2) of the Act. *Id.* at 221. As such, unique knowledge and expertise cannot be considered a contribution of “major significance” to the field. At issue for this regulatory criterion is how the petitioner’s original work has demonstrably impacted the field as a result of his knowledge and experience.

[REDACTED], Chief Economist, [REDACTED]

I have known [the petitioner] for over eight years in various professional capacities. More recently, as a [REDACTED] I have been following the advancements of his professional and academic career with attention and interest.

[The petitioner] contributed as an ad hoc collaborator to the preceding and follow-up activities of [REDACTED]

Some of the conclusions and recommendation reached during that meeting have been informing the [REDACTED]

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[The petitioner] went to close this cycle by reviewing the work done by [redacted]

[redacted] states that the petitioner “contributed as an ad hoc collaborator” to a seminar on [redacted]

Governments and policymakers routinely consult with experts in various fields when engaged in the formulation of new laws, policies, etc. Not every valid recommendation provided by such consultants during the law or policy making process automatically equates to an original contribution of major significance to the field. While [redacted] indicates that the petitioner’s views were covered by the [redacted] he does not explain how the petitioner’s work was either original or of major significance to the field. For instance, [redacted] does not provide specific examples of how the petitioner’s original PPP practices and recommendations have resulted in a significant increase in [redacted] or otherwise constitute original contributions of major significance to the field.

[redacted] continues:

[The petitioner] has worked extensively and has been invited to moderate panels and lecture in most important regional conferences focusing PPP related issues I used to attend, such as [redacted] [The petitioner] also coordinated the [redacted]

As an [redacted]

Due to his professional and academic achievements I believe [the petitioner] is one of the top global experts on financial guarantees and insurance on PPPs. The international [redacted]

[redacted] comments that the petitioner “has been invited to moderate panels and lecture in most important regional conferences focusing PPP related issues.” The AAO notes that many

occupational fields regularly hold meetings and conferences to present new work, discuss new trends, and to network with other professionals. These conferences are promoted and sponsored by industry 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 presentations are frequently cited by independent financial scholars, have significantly impacted the field, or otherwise rise to the level of contributions of major significance to the field. While presentation of the petitioner's work demonstrates that his findings and ideas were shared with others, the AAO is not persuaded that presentation of the petitioner's work at various forums focusing on PPP issues is sufficient evidence establishing that his work is of "major significance" to the field at large and not limited to the specific forums 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 to the field.

further states that the petitioner has . With regard comments relating to 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. Here it should be emphasized that 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.

In response to the director's request for evidence, the petitioner submitted search results from indicating that his body of published work has been only minimally cited. According to the submitted search results, none of the petitioner's scholarly articles has been independently cited to more than twice. The petitioner has not established that the minimal number of independent cites per article is indicative of original contributions of major significance to the field.

I hired [the petitioner] in 2000. . . . At the time, I was General Manager and adjunct director of health insurance solvency regulation at the [redacted]

[The petitioner's] work at the [redacted] was very important to develop and draft the current regulations in place in the [redacted] market. During [the petitioner's] period at the Agency, he worked drafting over 10 statutes. [The petitioner] worked in a group with accountants, actuaries, statisticians, administrators, attorneys and economists drafting statutes on health insurance managers' criminal rules, administrative procedures for appeals, liquidation of Insolvent health plans, premium rate increase, accounting standards, administrative Intervention, among others.

* * *

I have . . . seen [the petitioner's] articles on [redacted] and all over the World. . . . [The petitioner] was also important to [redacted] with his groundbreaking article, [redacted] his article was one of the [redacted] and certainly one of the first articles on [redacted] in the World. [redacted] is important because it allows for lower cost of premium for consumers.

* * *

[The petitioner] has constantly brought to light innovative issues to the [redacted] market. Perhaps the most important to the [redacted] market in the last few years was health insurance accreditation. Accreditation means "to measure quality of health plans services" offered to consumers. This was part of the [redacted] But the issue of quality measure (accreditation) always eluded Agency officials and directors. [The petitioner] started the debate on the topic, and helped bring to [redacted] [The petitioner] was extensively quoted on the topic, and his analysis of the importance of this topic always brought along multiples reviews. Every time a quote of his came out in the media, officials would make announcements and try to come up with measures to spearhead an initiative on health insurance accreditation.

[redacted] states that the petitioner worked with others at the [redacted] to develop and draft the current regulations in the [redacted] market. [redacted] however, fails to provide an explanation of how the specific proposals authored by the petitioner were original or how they significantly impacted the [redacted] [redacted] also comments that he has "seen [the petitioner's] articles on [redacted] and all over the World." While the petitioner's published articles are no doubt of value, it can be argued that any financial research or analysis must be shown to be original and present some benefit if it is to receive funding and attention from the public or

private sector. Any graduate or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every scholar who performs original research or financial analyses that add to the general pool of knowledge has inherently made a contribution of "major significance" to the field. For instance, while [REDACTED] describes the petitioner's [REDACTED] article as "groundbreaking," there is no documentary evidence showing that the article is frequently cited by independent scholars, that the original methods proposed by the petitioner have substantially impacted the [REDACTED] or that his work otherwise constitutes an original contribution of major significance to 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). [REDACTED] also asserts that the petitioner helped to spur debate on [REDACTED] "and helped bring to [REDACTED] [REDACTED] however, does not state that the petitioner developed an original quality measure or that the petitioner's specific method was of major significance to the field. There is no evidence showing that practices originated by the petitioner have significantly influenced the [REDACTED] industry or otherwise equate to original business-related contributions of major significance to the field.

The preceding references praise the petitioner and his expertise, but there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance to 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 from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron 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 policy analyst who has made original contributions of major significance to the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, has substantially impacted 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 AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

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

C. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel requests that the petitioner's entire submission be considered as comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addressed five of the categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Counsel's appellate brief does not explain why the regulatory criteria are not readily applicable to the petitioner's occupation. For instance, the petitioner has not established that the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix) is not applicable to policy analysts in the insurance and financial industry. Moreover, counsel fails to specifically identify the petitioner's

documentary evidence that is “comparable” to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

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.³ 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 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.

³ 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).