U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 14 2013 Office: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 established the requisite extraordinary ability and failed to submit extensive documentation of her 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. 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, the petitioner asserts that she meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), and (ix). 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):
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> > (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*, 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.*

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[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 Criteria

This petition, filed on September 7, 2012, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner states: "As a researcher, I have excelled and established myself as an outstanding professional in the area of agro-climatology, soil science, and crop simulation modeling." The petitioner received her Ph.D. in Soil Science from the in 2005. Subsequently, the petitioner worked as Laboratory Manager of the from October 2006 to November 2007. From August 2008 to December 2011, the petitioner trained as a postdoctoral research associate at At the time of filing the petition, the petitioner was working as a postdoctoral research fellow in the Department of Agronomy and Soils at The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[2]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her 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 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). Accordingly, the petitioner has not established that she meets this regulatory criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her 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 she meets this regulatory criterion.

> *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*

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

> *sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her 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 she 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 petitioner submitted evidence showing that she served as a peer reviewer for [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.*

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 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).

The petitioner submitted various letters of support discussing her work.

[redacted]

> First, let me state that the work being done by [the petitioner] has a particular value to the U.S. Government agencies, such as the U.S. Department of Agriculture, U.S. Environmental Protection Agency, U.S. Bureau of Reclamation, U.S. Agency for International Development, and other similar federal organizations, that are involved in agricultural productivity, and resources management and conservation. There have been a multitude of indications of climate change reported during the last half a century, and IPCC Fourth Assessment Report has identified the risk of climate change impact on agriculture, ecosystems, food-energy-water nexus, and human society. One of the major

> responsibilities of the U.S. agencies is to provide quantitative assessments of the impact of climate change on natural resources, food production, environment, and ecosystems. The agricultural modeling work accomplished and being pursued by [the petitioner] is certainly a key element in the work on the quantitative assessment of the climate change impacts on food security.
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> * * *
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> [The petitioner] is an outstanding researcher and her current research on the impact of climate change and simulation of crops to help decision-making regarding management practices is definitely in the best interest of the United States. I have no personal ties to [the petitioner]. I have known her name from her publications in prestigious scientific journals, such as [The petitioner] is working in the multidimensional areas of agriculture and soil science for the past 11 years and has published many [sic] useful information in some well-known and prestigious journals. After starting her job at she is now entering that phase of her research career when we would expect her contributions to fully take off and fundamentally alter our understanding of certain aspects regarding decision-making based on climate forecasts in agriculture and crop production.

While comments that the "agricultural modeling work accomplished and being pursued by [the petitioner] is certainly a key element in the work on the quantitative assessment of the climate change impacts on food security," he does not provide specific examples of how the petitioner's original work has significantly impacted the field or otherwise equates to scientific contributions of major significance in the field. In addition, asserts that the petitioner has published "useful information" in prestigious journals, but there is no documentary evidence showing that her specific findings rise to the level of original contributions of major significance in the field. further states that the petitioner "is now entering that phase of her research career when we would expect her contributions to fully take off and fundamentally alter our understanding of certain aspects regarding decision-making based on climate forecasts in agriculture and crop production." however, fails to explain how the petitioner's work was of major significance in the field as of the date of filing 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.

> [The petitioner's] continuing work in global climate change has also saved countless communities in hunger-impoverished areas. Her work is not limited to the present but has

far-reaching impacts that will contribute to the health and wellbeing of many generations to come.

[The petitioner's] research on climate variability as related to crop growth and yield is critical for the continued productivity of U.S. producers. Her research is considered to be on the "cutting edge" of what will be needed for ensuring the long-term environmental and economic sustainability of agricultural production. Since her work involves crops and climate variability, it also has positively impacted animal production as well. Her work with crop modeling is helping U.S. producers to remain productive during major climate change events like El Niño and La Niña. Her work has been based on input and cooperation from stakeholder groups from the producer to the end user. The approach that she has developed has resulted in the use of improved management tools for water, tillage, soil, and nutrient management, thereby improving the environmental impact of agriculture while continuing to feed countless communities.

The impact of [the petitioner's] research is reflected by her extensive publication and presentation record. Very often research is completed but never published such that it is not useful to the nation's scientific agricultural community. This is not the case with her research efforts. [The petitioner] has an excellent publication record for entire time that she has been in this country. It is obvious from her published articles in the

that she is very active and an excellent collaborator with other scientists across the country. . . . In addition to her publications, [the petitioner] has made several national and international presentations at the

comments that the petitioner's "work with crop modeling is helping U.S. producers to remain productive during major climate change events like El Niño and La Niña" and that the approach the petitioner has developed "has resulted in the use of improved management tools for water, tillage, soil, and nutrient management," but he fails to provide specific examples of how the petitioner's original work has been implemented in agricultural industry at a level indicative of scientific contributions of major significance in the field. 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. 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 her article or presentation.

The petitioner submitted citation evidence reflecting an aggregate of 35 cites to her body of research work. Ten of the submitted citations are self-cites by the petitioner or her coauthors. 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. "Evaluation of management strategies for sustainable rice-wheat cropping system, using DSSAT seasonal analysis" (*The Journal of Agricultural Science*) was independently cited to nine times (plus two self-citations by the petitioner);

2. "Sequence analysis of DSSAT to select optimum strategy of crop residue and nitrogen for sustainable rice-wheat rotation" (*Agronomy Journal*) was independently cited to eight times (plus one self-citation by the petitioner);

3. "Assessment of sustainability of rice-wheat system under different combinations of tillage, crop residue and fertilizer nitrogen applications using crop simulation model" (Ph.D. thesis, Indian Institute of Technology) was independently cited to twice (plus three self-citations by the petitioner);

4. "Solution chemistry and availability of iron to groundnut crop (Arachis hypogaea L.) in calcareous soils" (M.Sc. thesis, University of Agricultural Sciences) was independently cited to three times;

5. "Correlation of Portable X-ray Fluorescence (XRF) and Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP-AES) for Elemental Determination" (*Compost Science and Utilization*) was independently cited to twice (plus four self-citations by the petitioner's coauthor Dr. Weindorf); and

6. "Response of wheat to wetland and dryland rice tillage, crop residue incorporation and rate of fertilizer N application in rice-wheat rotation on coarse alfisol of Eastern India" (*Proceedings of the 27th Southern Conservation Tillage Systems Conference*) 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. However, it is not 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 her research work is indicative of original scientific contributions of major significance in the field.

Staff Scientist V (Associate Professor) at the states:

> [The petitioner] had her Ph.D. from . . . . Her doctoral research on decision-making through simulation modeling for optimum use of nitrogen, an important and expensive agricultural input, was astounding. Her work on simulating the soil conditions after application of crop residue as a substitute of nutrient supply was a novel finding for rice-wheat rotational agricultural system. Crop residue is mainly used as fodder or roof material in most of the south Asian countries but her idea to use it as nutrient-resource was innovative. The idea was also tested through her crop model and found to be sustaining in long run. Rice-wheat rotation is one of prevalent crop rotation in India and a research finding like this is practically helpful to the farmers' community in India and beyond that.

comments on the petitioner's Ph.D. research at the but there is no documentary evidence showing that her work was frequently cited by independent researchers, widely implemented by the farming community, or otherwise constitutes original scientific contributions of major significance in the field. While the petitioner's Ph.D. research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis 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 scientist who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

> I have known [the petitioner] since 2001 when she registered her [sic] as Ph.D. student at I found her as an extremely diligent and commendable student with enormous quench [sic] of learning and understanding the methodology and mechanisms of soil and plant systems as well as crop productivity and agricultural system. Moreover, her ability to apply computer technology through her involvement in simulating the crop growth and yield by crop simulation models proves her generous dedication to the research. This definitely intensified the impacts of the results and application of her research in many folds to present agriculture.
>
> Results from her research on selection of management practices specially type of tillage, residue application and Nitrogen and irrigation strategies has increased the understanding of practices of resource management in agriculture and its impact on sustainability of crop production and economic output.

comments on the petitioner's "ability to apply computer technology through her involvement in simulating the crop growth and yield by crop simulation models." Assuming the

petitioner's ability is 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). further states that the results from the petitioner's "research on selection of management practices . . . has increased the understanding of practices of resource management in agriculture and its impact on sustainability of crop production and economic output," but there is no documentary evidence showing that the petitioner's findings were extensively applied in the agricultural industry, that her research results were heavily cited by independent researchers, or that her findings otherwise equated to original scientific contributions of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing or presenting research that did not add to the general pool of knowledge in the field. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions not only be original but of "major significance" in the field.

> I have known [the petitioner] since August 2008 when she started working at as a Postdoctoral Research Fellow and a Co-Investigator of the study entitled
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> * * *
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> [The petitioner's] past research has amply demonstrated that the selection of best and suitable management practices for a cropping system through field research and simulation of crop growth and yield by adopting crop models can help anticipate yield increase and sustain productivity in the long run. This research was well accepted and published in an internationally acclaimed journal ([The petitioner's] research on simulating the rice and wheat yield based on specific soil and climate condition help understand how an optimum rate of N application help increase crop yield as well as well management of resources.

states that the petitioner's research in was "well accepted," but according to the citation evidence submitted by the petitioner, her article in the journal has been independently cited to only eight times since its publication in 2008. There is no documentary evidence showing that any of the petitioner's original crop models have been widely implemented throughout the agronomy field or otherwise rise to the level of scientific contributions of major significance in the field.

[The petitioner] is currently working as a Postdoctoral researcher at where she works under the direction of

* * *

I have been working with [the petitioner] to provide agronomic data for the forecast climate model she is working on. The current model is focused specifically on wheat production and designed to help predict crop growth and nitrogen application rates during El Niño and [The petitioner] will present this work at the in Cincinnati, OH in This research represents a novel approach that integrates climate models with various production inputs to help farmers make better decisions to optimize yields and profits.

* * *

As the use of technology increases throughout farming systems in the United States, the model developed by [the petitioner] demonstrates how the integration of modern technology and traditional agronomic principles can optimize agricultural production. [The petitioner's] research is of particular significance because climate has traditionally been a variable that contributed significant risk to agricultural production, however, using climate forecasts to assist growers with their agronomic decision making significantly reduces risk associated with climate variability to produce consistent yields in order to feed a growing national and international population. In turn, the increase in agricultural production also benefits the economic growth of the United States.

[The petitioner] has produced a diverse, unique, and valuable body of work that has significantly contributed to the scientific literature. For example, [the petitioner's] findings on selection of management practices that include different wet and dry tillage techniques, crop residue incorporation, rates of fertilizer N application and irrigation strategies on soil physical properties, sequential soil organic carbon content, N leaching and N uptake has led to more economically and environmentally sound rice-wheat cropping systems. [The petitioner] also has worked in soil chemistry by examining different forms of iron and calcium present in calcareous soils and demonstrating that optimum combinations of moisture and $CaCO_3$ in the soil can improve groundnut yield on highly calcareous soils.

states that the petitioner was scheduled to present her work on the climate model at the in Cincinnati, OH in October 2012. The AAO notes, however, that any impact resulting from her presentation post-dates the September 7, 2012 filing date of the petition. 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. 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. With regard to the petitioner's , there is no evidence demonstrating that her approach

had been implemented across the United States to predict crop growth and to improve crop production, or that her findings otherwise equated to original contributions of major significance in the field at the time of filing the petition. In addition, there is no documentary evidence showing that the petitioner's findings on selection of crop management practices and her research on different forms of iron and calcium in calcareous soils are frequently cited by independent researchers, widely applied in the agricultural industry, or otherwise of major significance in the field.

, Bushland, Texas, states:

> [The petitioner's] background in agriculture especially soil science and crop modeling commanded her researches extensively on soil environment as well as crop simulation to understand the impact of climate change factors in agriculture which is very high interest to me. [The petitioner] works with crop models to simulate growth and yield of a crop or cropping system. The output of her research has been quite useful for my work related to remote sensing based models to improve agricultural water management in west Texas.
>
> Her research results on selecting crop-soil specific management practices for long-term sustainability are exceptional and have greatly helped the process of decision-making by producers and researchers. The outcome of her studies suggested that better management of nitrogen and water resources through proper decision-making using crop modeling is possible for selecting specific rate of nitrogen and irrigation strategies. I also noticed that some of the management strategies proposed by her are widely implemented in numerous research studies. Without any doubt, [the petitioner's] breakthroughs in crop simulation modeling to study the performance of cropping systems over long run and under varying climate are ground breaking with tremendous impact on crop production strategies.

asserts that the petitioner's "breakthroughs in crop simulation modeling . . . are ground breaking with tremendous impact on crop production strategies," but fails to provide specific examples of how the petitioner's approaches have been utilized throughout the agricultural industry or otherwise constitute original scientific contributions 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).

> [The petitioner] is currently employed at as postdoctoral research fellow and working on the climate change factors and its effect on crop growth and yield. She is also involved in developing and sharing the information on weather and climate and various other information regarding climate change and their effect on agriculture through an online website .

* * *

> As an engineer, I cannot emphasize enough how important [the petitioner's] research is to the individuals related to agriculture and economy. . . . [The petitioner's] involvement in studying how a little change in temperature and pressure on sea surface of the tropical Pacific Ocean in the form o nd its gradual effect on the agricultural system of SE USA has been exploring the opportunities to modify the management options based on climate change factors. The outcome of the research will unquestionably help farmers reduce over-application and encourage timely application of N fertilizer to the agricultural system.

comments that the petitioner helped develop and share "information on weather and climate . . . and their effect on agriculture through an online website" at but does not provide specific examples of how the petitioner's work has already been of major significance in the field. In addition, while indicates that the outcome of the petitioner's esearch "will unquestionably help farmers reduce over-application and encourage timely application of N fertilizer to the agricultural system," fails to provide any additional information or examples to show how the petitioner's specific research findings have actually been applied by others throughout the field, so as to demonstrate that her original contributions have been of "major significance."

states that [the petitioner] is currently working under her direct supervision as a Post-Doctoral Research Fellow. asserts that the petitioner, "who has a Ph.D. in Soil Science, is one of a handful of scientists with expertise in soil science, agronomy and crop simulation modeling techniques to improve crop production efficiency." As previously discussed, assuming the petitioner's research expertise is unique, the classification sought was not designed merely to alleviate skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue 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. The petitioner's appellate submission includes an April 26, 2012 e-mail from indicating that she and the petitioner "have been working on the development of a and that the petitioner "is working on the content of the page." There is no documentary evidence showing, however, that that the webpage has impacted the field at a level indicative of a scientific contribution of major significance in the field.

In his first letter,

> [The petitioner] started working with me on a project entitled " She conducted work on the soil physics related aspects of detecting buried land mines using ground penetrating radar (GPR). [The petitioner] actively planned the field research to study the effect of various soils with different textural and physical properties which affected the response of ground

> penetrating radar devices in detecting buried land mines. The research conducted during 2008-2009 suggested some interesting results on the impact of soil moisture concentration and electrical conductivity of different soils on differential GPR responses. We were excited to find differences in the soil effects during the first year of the study. We made plans to continue our research to reveal additional details of how the response was affected by soil properties. [The petitioner] wrote a $300K grant with me on which was funded in September 2010.
>
> [The petitioner's] research efforts were focused on identifying the soil factors that might be influencing the operation of the radar component of the mine detector. . . . Her findings were significant when analyzed. [The petitioner] found that there is a trend towards reduced reliability in mine detection with the GPR when the soil properties of clay allowed the clay particles to hold more water without becoming liquefied. Thus, now soldiers are aware that when the plasticity index of low swelling clay soil is above an index value of 19 the GPR may be less reliable.

comments that his project with the petitioner entitled "suggested some interesting results on the impact of soil moisture concentration and electrical conductivity of different soils on differential GPR responses," but does not provide specific examples of how the petitioner's findings have been successfully implemented to improve GPR reliability, or how her original work otherwise equates to a scientific contribution of major significance in the field. In addition, states that the petitioner helped him write a $300K grant on " which was funded in September 2010. The AAO cannot ignore that a substantial amount of scientific research is funded by grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, the AAO cannot conclude that the ability to secure funding for one's research constitutes an original contribution of major significance in the field. further states that the petitioner "found that there is a trend towards reduced reliability in mine detection with the GPR when the soil properties of clay allowed the clay particles to hold more water without becoming liquefied" and that "now soldiers are aware that when the plasticity index of low swelling clay soil is above an index value of 19 the GPR may be less reliable," but there is no documentary evidence demonstrating that the petitioner's findings have been implemented by the U.S. military or that her findings are recognized beyond the project such that her original work equates to a contribution of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than primarily limited to a specific research project and its collaborators.

In his second letter, states:

> [The petitioner] worked on two projects (funded by the in collaboration with the and the results from those projects made valuable contributions in the understanding of GPR (ground penetrating radar) devices used in the detection of buried antipersonnel landmines.
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> [The petitioner's] research findings were presented at several professional and scientific meetings and were captured in research reports submitted to the Release of information contained in the reports was subject to approval by the U.S. Army - Ft. Leonard Wood, MO. The findings of the research have not been published because we operated on one year contracts and these did not allow us to collect sufficient data over time to meet responsibility requirements for publishing. Research funding priorities shifted from land mine detection as the war in Iraq came to an end.
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> Although the results were not published in scientific journals, the outcomes of more than 3 years of research by [the petitioner] have potential for improving the safety of land mine detection beyond U.S. military personnel. The results of the studies conducted by [the petitioner] are being discussed with members of the U.S. State Department's Humanitarian Demining team. What we learned from our research can be transferred to non-military applications of the mine detection technology and to many other commercial applications of GPR technology. The information has value to many users.

comments that the petitioner has presented her research findings "at several professional and scientific meetings." 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 scientists, 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 scientific meetings are sufficient evidence establishing that her work is of "major significance" in the field as a whole and not limited to the engagements in which her work was presented. The petitioner has failed to establish, for example, the impact or influence of her presentations beyond those in attendance so as to establish that her work was of major significance in the field.

In addition, asserts that the petitioner's research results "can be transferred to non-military applications of the mine detection technology and to many other commercial applications of GPR technology," but he fails to provide specific examples of how the petitioner's findings are already being utilized at a level indicative of contributions 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. A petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Id.*

> I know [the petitioner] from her Post Doctoral position at the
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> [The petitioner] conducted several field scale experiments to select best combination of management practices for sustainable rice-wheat crop rotation. . . . I consider her ideas of applying seasonal and sequence analysis programs for simulation of rice-wheat rotation as pioneering and ground-breaking. Her research findings were novel and have definitely provided us with some basic understandings on intricacies between crop performance and effect of weather factors in long run. She successfully used crop models as a helpful tool to simulate the long-term yield of a crop rotation and verifying the long-term effects of different management practices on agricultural systems, which I think has inspired many researchers around the world to follow in her footsteps. [The petitioner's] crop simulation study has resulted in the widespread acceptance of using the CERES group of models for studying the effect of crop residue incorporation and selecting better N application strategies. The results of her studies have been published in Peer-reviewed with an impressive citation record.

While describes the petitioner's application of "seasonal and sequence analysis programs for simulation of rice-wheat rotation as pioneering and ground-breaking" and asserts that the petitioner "has inspired many researchers around the world to follow in her footsteps," he does not provide specific examples indicating that independent crop scientists are utilizing the petitioner's results, that her findings are being widely applied throughout the agricultural industry, or that her work otherwise constitutes original contributions of major significance in the field. also notes that the results of the petitioner's studies have been published in but the citation evidence submitted by the petitioner fails to demonstrate that her published findings in the journals have been heavily cited or were otherwise of major significance in the field.

states:

> [The petitioner] joined as a co-investigator and got involved in a study of . . . Subsequently, she wrote a proposal in 2010 on and it was approved for funding with more than $300,000.00.

* * *

> [The petitioner] has scientific background and experiences in understanding and the explaining the influence of climatic variable in conjunction with soils, fertilizers and other biotic and abiotic factors. She already has published and presented multiple papers and lectures on the related subjects in various scientific forums. The guidelines and recommendations coming out of her work will be very helpful to our farmers and agricultural producers. Recently she has developed a website which has become very useful to many users as a ready guide.

comments that the petitioner "has published and presented multiple papers and lectures on the related subjects in various scientific forums," but the minimal number of independent cites to the petitioner's work fails to demonstrate that her findings were of major significance in the field. Moreover, does not provide specific examples of how the petitioner's guidelines, recommendations, and website at have significantly impacted the field at large or otherwise equate to original contributions of major significance in the field. 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*, 580 F.3d at 1036. 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 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 research scientist who has made original contributions of major significance in the field. 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 AAO cannot conclude that she 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 her 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.

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

The petitioner submitted an August 6, 2012 letter from

> While a department head, I employed [the petitioner] to serve as At the time, our Laboratory served as one of only seven facilities in the U.S. certified in composted product quality assurance testing under TMECC/USCC [United States Composting Council] standards. As Laboratory Manager, [the petitioner] played a critical role not only with laboratory development, but as a principal who assisted with the definition of operational rules and procedures.

The petitioner submitted a December 17, 2012 letter from

> Please be advised that I worked with [the petitioner] in my role as the from Oct. 2006 through Nov. 2007. Her responsibilities during this time included testing compost samples and completing report forms for STA Program participants, while working for STA certified lab There were approximately 119 companies, representing 155 products in the STA Program at that time.
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> * * *
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> Her testing and resulting suggestions back to the compost producers helped to grow their knowledge in improving the quality of compost and this helped to supply better quality compost for the soil and environment. She played a significant role as both a soil scientist and a laboratory manager.
>
> was one of only 11 STA certified labs in the United States, and [the petitioner's] role in this program was very critical to its ongoing operation and success.

The petitioner submitted a December 19, 2012 letter from and stating:

> I worked with [the petitioner] during the mid 2000's when she managed the At that time, was one of only a few laboratories approved for testing of compost that participated in the Seal of Testing Assurance (STA) Program.

* * *

> Her specialized understanding of our industry and our product was critical in helping us produce a high quality product. We sell our various compost products for anywhere from $20/cubic yard up to $30/cubic yard depending on the blend. Without the and validity provided by [the petitioner] who specialized in compost, soils, etc., we could not have quoted the price and sold our products at these rates.

The petitioner submitted a 2007 progress report prepared by stating:

> Operation of the [Texas Agricultural Experiment Station] was dramatically scaled back with the departure of [the petitioner] (lab manager) and (director). Supervision of the lab has been transferred to and samples are being run by student workers.

In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. According to the 2007 progress report, the responsibility for testing of soil samples was assigned to "student workers" after the petitioner's departure from the Tarleton State University Compost Analysis Laboratory. As the petitioner was replaced by students, the submitted evidence fails to establish that she was responsible for the laboratory's success or standing to a degree consistent with the meaning of "critical role." However, the AAO finds that the petitioner's position as laboratory manager was equivalent to a leading role.

The next issue is whether the petitioner has submitted evidence establishing that the has a distinguished reputation. The petitioner submitted information about the from the The preceding information, however, fails to demonstrate that the had a distinguished reputation relative to other scientific laboratories in the United States. The petitioner has not established that simply qualifying as an approved laboratory to perform analyses is indicative of a distinguished reputation. Without objective documentary evidence setting the apart from other laboratories in the U.S., the AAO cannot conclude that the laboratory enjoyed a distinguished reputation during the petitioner's period of employment.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. 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 AAO can infer that 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 *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *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(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to submit documentary evidence showing that the reputation of the meets the elements of this regulatory criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

In light of the above, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The petitioner submitted a compensation statement from reflecting an annual gross salary of in 2007. The petitioner also submitted year end pay statements from Lincoln University indicating that she earned in 2008, in 2010, and in 2011. In addition, the petitioner submitted an August 17, 2012 pay statement from Auburn University reflecting biweekly earnings of annually.

On appeal, the petitioner submits 2007 salary information from limited to Stephenville, Texas for The petitioner also submits 2003 and 2007 salary information from limited to Jefferson City, Missouri for who were both employed at Lincoln University. The petitioner, however, must submit evidence showing that she has earned a *high* salary or other *significantly high* remuneration "in relation to others in the field," not simply a salary that is slightly above the amount paid to a small sampling of researchers from the universities and localities where she worked. The petitioner's reliance on average salary calculations limited to her peers at the two universities that employed her is not an appropriate basis for comparison in demonstrating that her earnings constitute a "high salary" relative to "others in the field." *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary

versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the petitioner has not established that she 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.[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.

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[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).