

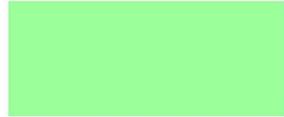
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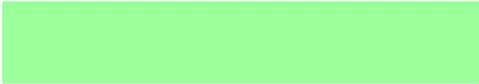
U.S. Citizenship
and Immigration
Services



DATE: **MAY 15 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(vi) and (viii).

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

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 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.*

II. ANALYSIS

A. Evidentiary Criteria

This petition, filed on February 22, 2012, seeks to classify the petitioner as an alien with extraordinary ability as an epidemiologist. At the time of filing the petition, the petitioner was working as an _____

According to _____

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).

information submitted by the petitioner from the [REDACTED] “is a unique 2-year post-graduate *training program* of service and *on-the-job learning* for health professionals interested in the practice of applied epidemiology.” [Emphasis added.] 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 petitioner submitted a May 19, 2009 certificate from [REDACTED] stating that he received a [REDACTED]. The petitioner also submitted an April 24, 2009 letter from [REDACTED] stating:

Congratulations on your outstanding performance in your public health studies this year! I am very pleased to offer you a merit-based scholarship to recognize your strong performance as an MPH [Master of Public Health] student.

[REDACTED] recognizes outstanding MPH students. This scholarship, in the amount of \$4,425 USD, is designated for tuition costs and will be disbursed towards the current term.

The petitioner’s [REDACTED] reflects institutional recognition from his alma mater rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships cannot be considered prizes or awards in the petitioner’s field of endeavor. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien’s ability to benefit the national interest. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm’r 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien’s eligibility for this more exclusive classification. Moreover, competition for the petitioner’s [REDACTED] was limited to other MPH students enrolled in the [REDACTED]. Experienced epidemiologists who have already completed their educational studies do not seek such student scholarships. The petitioner’s scholarship represented financial support for his then ongoing graduate studies at [REDACTED], not a nationally or internationally recognized prize or award for excellence in epidemiology. There is no documentary evidence demonstrating that the petitioner’s [REDACTED] was recognized beyond his alma mater at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

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

The petitioner submitted a December 16, 2009 letter from [REDACTED] stating:

On behalf of the [REDACTED] Committee, I am delighted to notify you that you have been selected to move to the final phase in the process for acceptance into [REDACTED] program for the class beginning in July 2010. At this point, the Selection Committee has chosen the candidates that we want to formally offer positions in the next [REDACTED] Class. The final phase is for you to indicate if you are still interested in participating in the [REDACTED] Program. We will then forward the names of interested candidates to the Atlanta Human Resources Center and they will contact you with the formal job offer.

We look forward to receiving your signed response memo no later than 5:00 PM (EST), December 21, 2009.

* * *

Since you are not a U.S. citizen, your appointment will be through the [REDACTED]. Please note that this offer is contingent upon verification of credentials and a favorable background check.

* * *

In considering the offer for a position in the [REDACTED], please again review the following requirements of those who join the [REDACTED]

- A full two-year commitment to an assignment;
- Complete attendance at the following conference and courses:
 - Spring [REDACTED] Conference (April 18 through April 26, 2010) (NOTE: This Conference occurs before the 2-year assignment begins and requires participation in assignment interviews on Saturday, April 25th. Travel will be provided by the [REDACTED] program.)
 - Summer [REDACTED] Course (4 weeks in July, 2010)
 - Annual Fall Courses (2010 and 2011 and [REDACTED] Conferences in 2011 and 2012)
 - Regional and national conferences and other meetings, as required
 - [REDACTED] Rounds
- Moving from your current location to an [REDACTED] assignment in another location at least 50 miles away;
- Flexibility and willingness to match to any of at least five [REDACTED] assignments;
- Termination of previous work and school responsibilities;
- Ability to travel on short notice as needed by [REDACTED] (most travel lasts less than one month);
- Flexibility in work days and hours to ensure rapid response to public health problems and to meet training requirements

If you have questions or concerns about meeting any of the above requirements, contact Dr. [REDACTED] . . . prior to accepting this offer.

We look forward to welcoming you in April 2010 when the incoming [redacted] class comes to Atlanta to participate in the annual [redacted] Conference and assignment activities.

In addition, the petitioner submitted page 21 of the 59th Annual [redacted] Conference program book that identifies him among 85 members of the “Incoming [redacted] Class of 2010.”

The petitioner also submitted information from the [redacted] website stating:

More About the [redacted]

The [redacted] is primarily a post-doctoral training program.

* * *

Training and Service

The [redacted] program provides competency-based training in both the classroom and through on-the-job learning activities. Additionally [redacted] officers provide service to the [redacted] and our public health partners.

Training

Classroom instruction includes topics such as applied epidemiology, biostatistics, public health surveillance, scientific writing, and working with the media, as well as emerging public health issues. Each [redacted] class begins with 1-month course, starting in July each year in Atlanta.

As part of the on-the-job training, [redacted] officers are required to complete core activities of learning (CALs).

* * *

Service

The [redacted] program is modeled after a traditional medical residency program where much of the education occurs through experimental learning. Thus, the [redacted] program not only organizes training for the officers, but a major contribution of the program (and work of the officers) is providing service to the [redacted] and our public health partners.

The petitioner’s acceptance into the [redacted] program through the [redacted] Fellowship constitutes his admission to a two-year post-graduate “training program” of on-the-job learning for health professionals interested in the practice of applied epidemiology rather than a nationally or internationally recognized prize or award for excellence in the field. The record contains no documentary evidence showing that the petitioner’s [redacted] fellowship “job offer” is a nationally or internationally recognized prize or award in the field of endeavor. Moreover, the AAO notes that competition for the petitioner’s [redacted] fellowship was limited to recent graduates seeking to further

their training and on-the-job experience in the practice of applied epidemiology. Experienced epidemiologists already practicing in the field do not seek or compete for such postgraduate training positions. In addition, while the petitioner submitted information from the [REDACTED] about its [REDACTED] program, this material is not sufficient to demonstrate the national or international *recognition* of the petitioner's [REDACTED] fellowship. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence on record demonstrating that the petitioner's specific [REDACTED] fellowship was recognized beyond the [REDACTED] at a level commensurate with a nationally or internationally recognized prize or award.

The petitioner submitted page [REDACTED] identifying him among five [REDACTED]. The petitioner also submitted page 12 of the [REDACTED] Conference program book that provides the following information about the [REDACTED]

The [REDACTED] Alumni Association will sponsor the [REDACTED], to be presented during the Conference. This award recognizes the presentation that best exemplifies the effective application of a combined epidemiological and laboratory approach to an investigation. Presentations for which the first author is a current [REDACTED] and at least one coauthor is a laboratorian (CDC, state health department, or other) may be considered for the award.

The preceding information indicates that consideration for the [REDACTED] is limited to presentations first-authored by "a current [REDACTED]" As such, this award reflects internal recognition for current participants in the [REDACTED] training program rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In addition, the petitioner submitted a March 4, 2011 memorandum from [REDACTED]

Congratulations! Your abstract [REDACTED] has been selected as a finalist for the [REDACTED]. This is an honor in itself, since abstracts of exceptional quality were submitted for consideration for the [REDACTED]

Selection of the award winner is conducted in two stages. During the abstract selection meeting of the [REDACTED] five finalists were selected using the evaluation criteria published with the Call for Abstracts. During the [REDACTED] Conference, the [REDACTED] will be selected based on overall quality and clarity of the presentation that best exemplifies the effective application of a combined epidemiologic and laboratory approach to an investigation. Announcement of the winner of the [REDACTED]

The plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence showing that the petitioner actually won the [REDACTED] Selection as one of "five finalists" is not a prize or an award and does not fall within the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Regardless, there is no documentary evidence demonstrating that the [REDACTED] is recognized beyond the presenting organization at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field of endeavor.

On appeal, the petitioner submits a July 9, 2012 "Honor Award Certificate" presented to him by the [REDACTED] for exemplary national leadership in the surveillance and prevention of healthcare-associated bloodstream infections." The preceding certificate was presented to the petitioner subsequent to the petition's February 22, 2012 filing date. Eligibility, however, 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. Accordingly, the AAO will not consider an award received by the petitioner after February 22, 2012 as evidence to establish his eligibility. Regardless, there is no documentary evidence showing that the petitioner's "Honor Award Certificate" equates to a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In light of the above, the petitioner has not established that he 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 petitioner submitted a certificate dated May 5, 2009 stating that he was "elected a member of the [REDACTED] and "is duly enrolled in this honorary public health society." The petitioner also submitted an April 16, 2009 congratulatory letter from [REDACTED]

[REDACTED] stating:

The [REDACTED] and I are delighted to inform you that you have been elected to membership in the Society.

* * *

The Chapter elects students, faculty, and alumni nominated by their peers for their scholarly achievements and contributions to the advancement of public health. Only students meeting the highest academic standards and endorsed by the faculty are eligible for membership, and only those demonstrating a potential for significant contribution to the field of public health

are elected to the Society. Election to membership in [REDACTED] recognizes not only merit but also encourages further excellence and devotion to public health.

In addition, the petitioner submitted general information about the [REDACTED] [REDACTED] from its website. The submitted information states that [REDACTED] expanded to more than 70 chapters throughout the world and has more than 14,000 members from top echelons of graduate schools and programs of public health, as well as the public health community.”

The petitioner also submitted the bylaws for the [REDACTED] [REDACTED] “Article VI: Membership” states:

There shall be five categories of membership in [REDACTED]

A. Student Membership

Student membership shall be selected by the Membership Committee. Members elected from the student body shall be approved at the annual meeting. They shall be chosen with due regard to their scholarly attainments and honorary character of [REDACTED]. In order to be eligible for membership in [REDACTED] in this category, the student shall:

- Possess a bachelor's degree or a degree equivalent to or higher than the bachelor's degree, and
- Have completed a full year of academic courses or be in the last rating period leading to an advanced degree in public health, and
- Intend, so far as can be ascertained, to follow a career in hygiene or public health.

A maximum of ten percent (10%) of graduating students shall be elected to membership in any one year. Those elected shall be from the upper twenty-five percent (25%) in class standing and have demonstrated real or potential qualities of leadership in public health. The total student group to be considered for membership shall only include persons who are candidates or who have received an advanced degree in public health during that current academic year. Nomination of student candidates shall be made only by faculty of the School who have previously been inducted into [REDACTED]

The term "advanced degree in public health" as used in these By-laws, refers to the following degrees or their equivalents: Master of Public Health, Doctor of Public Health, Master of Science, Master of Health Science, Doctor of Science and Doctor of Philosophy

B. Faculty Membership

Faculty membership shall be selected by the Membership Committee. The selection committee will give particular attention to outstanding public health performance in scholarship, teaching, research and the quality of publications. The total number of faculty members elected in any one year may be up to three percent (3%) of the full-time faculty.

C. Alumni Membership

Alumni membership shall be selected by the Membership Committee. [REDACTED] may elect a maximum of ten graduated from the School whose work in the practice of public health would serve as a model for future graduates of the School for membership each year.

D. Honorary Membership

[REDACTED] may nominate honorary members to be elected by a unanimous vote of the National Council. This membership shall be limited and conferred only upon persons possessing exceptional qualifications who have attained a meritorious distinction in the field of Public Health.

E. Emeriti Membership

Faculty or Alumni members shall receive emeriti status after 40 years of membership. Emeriti members shall have no obligation to pay annual membership dues. All emeriti members shall continue to receive the annual mailings and shall be encouraged to partake in the Chapter's activities.

On appeal, the petitioner submits copies of the [REDACTED] Constitution and By-Laws that repeat the same requirements as indicated in the above [REDACTED] bylaws. The AAO notes that the petitioner was admitted to the [REDACTED] as a student member. The AAO is not persuaded that possessing a bachelor's degree or a degree equivalent to or higher than the bachelor's degree; having completed a full year of academic courses or being in the last rating period leading to an advanced degree in public health; intending to follow a career in hygiene or public health; limiting membership to a maximum of ten percent of graduating students in any one year; requiring that students be from the upper twenty-five percent in class standing; and demonstrating real or potential qualities of leadership in public health equate to outstanding achievements. The legislative history makes clear that Congress intended this classification for those with a career of acclaimed work rather than those whose achievements are primarily academic in nature. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the petitioner has not submitted documentary evidence showing that the Membership Committee of the [REDACTED] is comprised of "recognized national or international experts" in the field.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" 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 establish that his membership in the [REDACTED] meets the elements of

this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that he meets the plain language requirements of 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 from his superiors discussing his work.

states:

[The petitioner] has served with distinction in my branch at the [redacted] since July 2010.

* * *

[The petitioner’s] achievements include an investigation of [redacted] through organ transplants, a rare but fatal infection and the results of his work should help prevent infections in the future. Following his investigation, [the petitioner] prepared a report [redacted] for the [redacted] and [redacted] internationally recognized agency publication. The report was reproduced in [redacted] (circulation of several hundred thousand) and the [redacted]. He has been invited to give several presentations of his work including a scientific poster at the [redacted] which was designated a poster of distinction in recognition of the outstanding quality.

[redacted] comments that the petitioner prepared a report for [redacted] but he does not provide specific examples of how the petitioner’s original work has significantly impacted the field or otherwise equates to a scientific contribution of major significance in the field. In addition, while [redacted] asserts that the petitioner gave a presentation at the [redacted] “which was designated a poster of distinction,” the petitioner failed to submit documentary evidence from the conference organizers showing that his work received the “poster of distinction” designation. Going on record without supporting documentary

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless, there is no documentary evidence showing that the petitioner's presented findings rise to the level of original contributions of major significance in the field.

states:

The [redacted] investigation in [redacted] in which [the petitioner] played a critical role, has led to significant scientific publications and presentations. First, working with several collaborators, [the petitioner] prepared a brief report [redacted] on the preliminary findings of the investigation, which was published in the September 17, 2010 issue of the [redacted] major vehicle for dissemination of public health reports. The report was subsequently reproduced in [redacted] and the [redacted]. He was also the lead author on two scientific abstracts detailing the outcome of the field investigation. He has subsequently presented the findings of the investigation at the annual [redacted] and, at the invitation of the state health department, the [redacted]. His poster presentation at the 2011 [redacted] was designated a poster of distinction in recognition of the outstanding quality of his work.

With regard to [redacted] 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 his article or presentation.

The petitioner submitted citation evidence reflecting an aggregate of twelve cites to his report entitled [redacted] that was published in [redacted]. Three of the submitted citations post-date the petition's February 22, 2012 filing date. 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. Accordingly, the AAO will not consider cites to the petitioner's work occurring after February 22,

2012 as evidence to establish his eligibility. Regardless, merely submitting documentation reflecting that the petitioner's work has been cited by others in their published work is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. It is not, however, an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the moderate number of independent cites to his [redacted] article at the time of filing is indicative of an original scientific contribution of major significance in the field.

[redacted] states:

I have known [the petitioner] for a year and a half and have been his supervisor while he has worked on a project as [redacted] in the Division of [redacted]

[The petitioner] played a critical role in the data analysis, interpretation, and publication of the results from a novel national survey on the availability of occupational exposure management [redacted] services for bloodborne pathogens among outpatient dialysis centers across the United States.

* * *

This survey is the first of its kind to be reported in the medical literature and [the petitioner] made significant contributions to the project. He, alone, analyzed the survey data, and offered meaningful, accurate, and appropriate interpretations. His effort on this project has led to both presentations and anticipated publication. His work was recognized by division leadership and selected to be presented at the [redacted] in March 2011. His presentation, [redacted] received excellent feedback from fellow [redacted] and [redacted] personnel. He is the first author on the manuscript reporting this survey project's results, and just recently submitted it for publication to the [redacted]. Ultimately, this work has identified a demographic of dialysis centers that could improve OEM service availability, and may assist with future targeted interventions in guideline recommendation dissemination.

[redacted] states that the petitioner's presentation entitled "[redacted]" to [redacted] received excellent feedback from fellow [redacted]; and [redacted] personnel after being presented at the [redacted]. However, there is no evidence demonstrating that the petitioner's work is recognized beyond the [redacted] such that his work constitutes an original 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 limited to one's research institution or employer. In addition, [redacted] states that a manuscript reporting the survey project's results was recently submitted for publication in the [redacted] but the AAO notes that the article was not actually published until June 28, 2012. Thus, any impact resulting from this publication post-dates the filing of the petition. [redacted] also comments that that petitioner's work "could improve OEM

service availability” and “may assist with future targeted interventions in guideline recommendation dissemination,” but the record contains no evidence showing that the petitioner’s work was already of major significance in the field at the time of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175.

states:

Over the past two years, I have been [the petitioner’s] secondary supervisor in the Division of

* * *

[The petitioner] has also played a critical role during outbreak investigations conducted by our division. This includes an investigation of an outbreak of hepatitis C virus infections at an outpatient dialysis facility in May 2011 that was led by [the petitioner].... The team made recommendations to the facility and the state health department that, once implemented, led to the successful interruption of disease transmission within the facility.

[The petitioner’s] thorough investigation served to inform state and federal public health officials about infection control lapses that are continuing to occur in some dialysis facilities, providing valuable feedback on efforts at both guidelines. Two very concrete examples of this are products that [the petitioner] has been leading the development of following his investigation. The first is a tool to guide environmental disinfection practices in dialysis units and the second is an algorithm to help dialysis providers understand how to manage hepatitis C virus screening results. In his outbreak investigation, [the petitioner] identified lapses in environmental disinfection practices and failures to properly manage patients’ hepatitis C screening results. Unfortunately, these are issues that are not unique to this dialysis facility. Working with experts at [redacted] [the petitioner] led the development of a checklist tool that will be promoted nationally to improve disinfection practices in all dialysis centers. He also drafted a step-by-step guide to translate [redacted] expectations around hepatitis C screening of patients for dialysis providers. This algorithm will be incorporated into an invited manuscript on this topic led by [the petitioner] in a nephrology journal.

comments that the petitioner developed [redacted] and [redacted] but [redacted] fails to provide specific examples of how the petitioner’s tool and algorithm have already been implemented by dialysis centers at a level indicative of scientific contributions of major significance in the field.

states:

In addition to serving a key role in the projects highlighted above, [the petitioner] has given several important presentations on healthcare-associated infections, the most recent of which

took place during the [redacted] where he shared the findings of the [redacted]. Earlier in the year, he gave a two-hour presentation at a [redacted] on the prevention of healthcare-associated infections in dialysis centers to a large audience of dialysis and other healthcare providers.

[redacted] indicates that the petitioner has presented his work at the [redacted] and [redacted] on the prevention of healthcare-associated infections in dialysis centers, but there is no documentary evidence showing that the petitioner's original work has been extensively applied in the healthcare industry, that his presented findings were heavily cited by independent researchers, or that his work 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 presenting or publishing findings 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.

[redacted] states:

I have had the pleasure of being [the petitioner's] primary supervisor during his time as an [redacted] present.

* * *

First, between August and October 2010, he was the co-lead of the investigation of cases of organ [redacted] a rare but frequently fatal infection with case-fatality rates reported to be as high as 95%. . . . During the investigation, [the petitioner] coordinated the flow of information across all collaborators on the investigation. He was also deployed to Tucson and Phoenix, Arizona, from September [redacted], during which time he conducted the primary outbreak investigation He also performed a rapid review of the clinical records of the cases to better characterize their pattern of clinical presentation and progression. . . . On returning to Atlanta, he conducted a detailed review and abstraction of hundreds of highly-technical pages of clinical and laboratory records for the donor and the infected organ recipients, to identify commonalities in their clinical, radiologic and laboratory records, all of which would aid in early identification and intervention on future cases of the disease. The hallmark of this investigation, however, was that two of the four organ recipients – in Utah and California – who showed laboratory evidence of exposure to the organism [redacted] were successfully treated with a preemptive antimicrobial regimen recommended by [redacted] thereby potentially averting additional fatalities in the transplant cluster.

* * *

During the investigation, [the petitioner] prepared a brief report titled [redacted] – [redacted]" which was published in the September 17, 2010 issue of the [redacted] major

vehicle for the dissemination of timely scientific information to the public. The report was subsequently reproduced in [REDACTED] and the [REDACTED] and has been cited in several scientific articles discussing the role of [REDACTED] as an emerging pathogen transmissible during organ transplantation.

According to the citation evidence submitted by the petitioner, his report entitled [REDACTED] had been cited to only nine times as of the petition's February 22, 2012 filing date. The petitioner has not established that this moderate level of citation is indicative of a scientific contribution of major significance in the field. While the petitioner performed admirably during the course of the investigation and helped identify two additional organ recipients who were exposed to [REDACTED] there is no documentary evidence showing that the petitioner's original work was of major significance in the field. Although the petitioner's postgraduate 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 graduate 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 epidemiologist who performs original investigations that add to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

[REDACTED] further states:

[The petitioner] was also the lead author on two scientific abstracts discussing the findings of the investigations, both of which were highly rated at the conferences where they were presented. The first, titled [REDACTED], " was a finalist for the prestigious [REDACTED] and was presented at the [REDACTED] . . . The second abstract, titled [REDACTED] was presented as a poster during the 2011 [REDACTED], a major international conference of stakeholders in the transplant community with over a thousand participants. The presentation was designated a poster of distinction by the conference organizers in recognition of the significance and outstanding quality of the investigation.

[REDACTED] comments that the petitioner has presented his findings at the [REDACTED] in April 2011 and at the [REDACTED]. The AAO notes that many professional fields regularly hold meetings and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific conference presentations are frequently cited by other epidemiology researchers, 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 his work is of "major significance" to the field as a whole and not limited to the engagements in which his work was presented. The petitioner has failed to establish, for

example, the impact or influence of his presentations beyond those in attendance so as to establish that his work was of major significance in the field.

continues:

[The petitioner's] second field investigation involved a [redacted] at a special pediatric facility in Rhode Island. From January 28 – February 9, 2011, [the petitioner] was part of a [redacted] that was deployed to Providence, Rhode Island, to assist the affected health facility and state public health officials with investigating the cases and interrupting transmission of the disease. During this investigation, he was designated a secondary (deputy to the lead field investigator) and was specifically assigned to conduct a thorough assessment of infection control practices at the facility, with a view to identifying deficiencies and providing recommendations to interrupt transmission of the implicated disease organism, [redacted]. As a result of the infection control assessment and resulting recommendations, the facility was able to institute measures which led to the interruption of the disease outbreak. [The petitioner] is the second author on a scientific article describing the outbreak, which is currently undergoing editorial review by the [redacted].

[redacted] comments that the petitioner conducted a thorough assessment of infection control practices at the [redacted], but [redacted] fails to provide specific examples of how the petitioner's work has substantially impacted the medical field or otherwise constitutes an original scientific contribution of major significance in the field. In addition, [redacted] states that the petitioner "is the second author on a scientific article describing the outbreak, which is currently undergoing editorial review by the [redacted] journal." Thus, any impact resulting from this publication post-dates the filing 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.

further states:

Third, in May 2011, [the petitioner] was again the [redacted] at an outpatient dialysis facility in Atlanta, Georgia. . . . [The petitioner] led a field team of [redacted] that investigated the cases at the facility. . . . Following the conclusion of the field investigation, [the petitioner] developed a remediation plan for the facility which resulted in termination of the outbreak. The findings of this investigation were presented during the session on [redacted].

[redacted] indicates that the petitioner led a field team of [redacted] that investigated [redacted] at an outpatient dialysis facility in Atlanta, but [redacted] fails to provide specific examples of how the petitioner's original work impacted the healthcare industry at a level indicative of scientific contributions of major significance in the field. In addition, [redacted] states that the findings of the petitioner's investigation "were presented during the session on [redacted]. Thus, any impact resulting from this presentation post-dates the filing 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.

continues:

[The petitioner] played a critical and primary role analyzing data on the national survey of occupational exposure management policies for bloodborne-pathogens in U.S. dialysis facilities. In March 2011, he presented preliminary findings of survey at the weekly seminar of [REDACTED]. He subsequently led efforts to prepare a scientific article discussing the findings of the survey, working under the supervision of [REDACTED] a national expert on issues relating to occupational health and safety in healthcare settings. He is the first author on the manuscript, titled ‘ [REDACTED] [REDACTED] a leading journal in nephrology. [The petitioner] has also played a critical role in analyzing a large surveillance data set to assess trends in emergency department visits for adverse events due to antibiotics used in treating [REDACTED] an emerging infection of major public health significance. A manuscript from this project, on which he is also the first author, will be submitted to the [REDACTED]

[REDACTED] asserts that the petitioner “played a critical and primary role analyzing data on the national [REDACTED] [REDACTED] does not provide specific examples of how the petitioner’s results have already been applied throughout the healthcare industry or were otherwise of major significance in the field. In addition, [REDACTED] states that the petitioner authored an article that [REDACTED] and another article that [REDACTED]

There is no evidence showing that either of the preceding articles had been published at the time of filing on February 22, 2012. Thus, any impact resulting from their publication post-dates the filing 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.

further states:

[The petitioner] was deployed to [REDACTED] for one month between [REDACTED], [REDACTED], to assist on a critical humanitarian response to the famine and drought affecting parts of [REDACTED]. During his deployment, he assisted officials of the [REDACTED] in evaluating a supplementary feeding program for children affected by the famine, most of whom were from displaced populations along the border of [REDACTED]. He expertly recruited, coordinated, and supervised a large number of local contractors to assist in following a cohort of 1500 children that were enrolled in the evaluation, the majority of whom were in hard to reach areas with major security concerns.

His performance on the assignment was stellar and he received a strong letter of commendation from the leadership of the branch at [REDACTED] he was seconded to during the assignment.

[REDACTED] comments on the petitioner's deployment to [REDACTED] in 2011, but [REDACTED] fails to explain how the petitioner's work was both original and of major significance in the field. There is no documentary evidence in the record showing that the petitioner's work in evaluating the feeding program equated to an original scientific contribution of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered by both the director and the AAO. The AAO notes that the letters of support submitted by the petitioner are all from his superiors at the institutions where he has studied and worked. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the impact of his work beyond his immediate circle of colleagues. 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 an epidemiologist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The petitioner submitted evidence showing that he coauthored a single report entitled "[REDACTED]" that was originally published in [REDACTED]

[REDACTED] The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner's "authorship of scholarly *articles* in the field" [emphasis added] in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the petitioner's authorship of scholarly "articles," his authorship of one report entitled "[REDACTED]" that had appeared in three different professional publications at the time of filing the petition does not meet the plain language requirements of this regulatory criterion.

On appeal, the petitioner submits an article he coauthored entitled [REDACTED] that was [REDACTED] in [REDACTED]. The preceding article was published in [REDACTED] subsequent to the petition's February 22, 2012 filing date. 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 at 49. Accordingly, the AAO will not consider a scholarly article published by the petitioner after February 22, 2012 as evidence to establish his eligibility.

In light of the above, the petitioner has not established that he meets the plain language requirements 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 AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

The record adequately demonstrates that the [REDACTED] has a distinguished reputation. The next issue to be determined is whether the petitioner has performed in a leading or critical role for the [REDACTED]. The petitioner submitted a letter from [REDACTED] stating:

In his role as an [REDACTED] [the petitioner] played a critical role during the investigation of a [REDACTED] a rare but frequently fatal infection, in [REDACTED]

As an [REDACTED] [the petitioner] plays a critical role in the organization at [REDACTED] [REDACTED] are often assigned to conduct field investigations of disease outbreaks within and outside the United States. Their work has a great impact on domestic and global public health outcomes, often with significant policy implications. In August 2010, following reports of possible transmission of [REDACTED] through organ transplants, [the petitioner] was assigned to work with my office in assisting the [REDACTED] [REDACTED] with a field investigation. Working under the supervision of senior scientists at [REDACTED] including myself, [the petitioner] co-led the field investigation of what was only the second recognized cluster of transplant-transmitted [REDACTED] in the United States. While in the field, he collaborated with state health officials in assisting the affected transplant centers, offering technical guidance on clinical identification and management of the disease. The investigation led to important recommendations regarding the prevention of [REDACTED] which often has a fatal outcome in infected patients.

The petitioner also submitted a letter from [REDACTED] stating:

The petitioner] played a critical role in the data analysis, interpretation, and publication of the results from a novel national survey on the availability of occupational exposure management [REDACTED] services for bloodborne pathogens among outpatient dialysis centers across the United States.

(b)(6)

* * *

This survey is the first of its kind to be reported in the medical literature and [the petitioner] made significant contributions to the project. He, alone, analyzed the survey data, and offered meaningful, accurate, and appropriate interpretations. His effort on this project has led to both presentations and anticipated publication.

In addition, the petitioner submitted a letter from [redacted] stating:

Over the past two years, I have been [the petitioner's] secondary supervisor in the [redacted]

[redacted] In his role as an [redacted] assigned to our division, [the petitioner] has played a critical role on several projects and assignments that are of major significance to the field of public health, notably in the area of preventing the transmission of healthcare-associated infections in dialysis settings.

* * *

[The petitioner] has . . . played a critical role during outbreak investigations conducted by our division. This includes an investigation of an outbreak of hepatitis C virus infections at an outpatient dialysis facility in May 2011 that was led by [the petitioner]. . . . [The petitioner] led a [redacted] during a two-week field investigation at the facility. . . . The team made recommendations to the facility and the state health department that, once implemented, led to the successful interruption of disease transmission within the facility.

The preceding references assert that the petitioner "played a critical role" at the [redacted] but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.).

The petitioner also submitted a letter from [redacted] stating:

During his assignment as an [redacted] [the petitioner] participated in three emergent public health outbreak investigations that interrupted disease transmission, decreased the morbidity and/or mortality associated with the outbreak, and improved the health of those involved. In two of these investigations, he was also designated the lead field investigator for the agency.

* * *

[The petitioner] has recently been promoted to the position of [redacted] in the [redacted] In his new role, he will join [redacted] to [redacted]

provide technical assistance to the [REDACTED] the [REDACTED]

In addition, the petitioner submitted a July 25, 2012 letter from Human Resources stating that his appointment to position of [REDACTED] would be effective on August 12, 2012. The petitioner's performance in the role of [REDACTED] w post-dates the petition's filing date. 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. Accordingly, the AAO will not consider a role performed by the petitioner after February 22, 2012 as evidence to establish his eligibility.

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. While the petitioner performed admirably on the projects to which he was assigned, there is no evidence demonstrating that his subordinate role in the [REDACTED], [REDACTED]. For example, there is no organizational chart or other evidence documenting where the petitioner's [REDACTED] position fell within the general hierarchy of the epidemiologists employed by the [REDACTED]. The AAO notes that the petitioner's role as an [REDACTED] involved "competency-based training in both the classroom and through on-the-job learning activities." The petitioner's evidence does not demonstrate how his temporary post-graduate appointment differentiated him from the numerous other [REDACTED] being trained by the [REDACTED] let alone the [REDACTED] executive leadership. The documentation submitted by the petitioner does not differentiate him from the [REDACTED] other officers and managerial staff so as to demonstrate his leading role, and fails establish that he was responsible for the [REDACTED] success or standing to a degree consistent with the meaning of "critical role."

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. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to submit documentary evidence showing that his role as an [REDACTED] meets the elements of this regulatory criterion, which he 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 he meets the plain language requirements of 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 AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.

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).