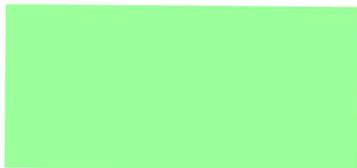


(b)(6)

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

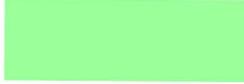


U.S. Citizenship
and Immigration
Services

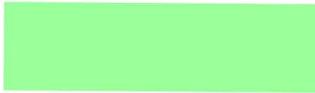


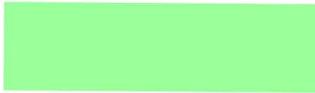
Date: **NOV 12 2013**

Office: Nebraska Service Center

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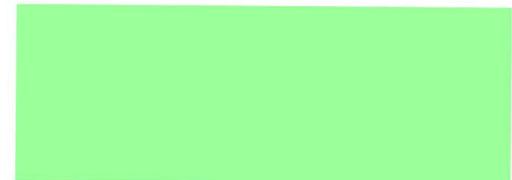
IN RE:

Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg

Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically as a periodontist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify 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.

On appeal, counsel asserts that USCIS erroneously determined that the petitioner did not establish his eligibility as an alien of extraordinary ability. Counsel asserts that the petitioner submitted credible evidence in support of the regulatory criteria and that USCIS failed to interpret its own regulations correctly by denying the petition.

I. LAW

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

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

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director determined that none of the awards the petitioner submitted under this criterion met the requirements of the regulation. On appeal, counsel asserts that the director erred in finding that the petitioner's finalist showing in the [REDACTED] and the [REDACTED] do not meet the plain language requirements of the criterion. The plain language of 8 C.F.R. § 204.5(h)(3)(i) requires prizes or awards and does not allow for finalists and nominees of awards, or other lesser distinctions. Therefore, the record supports the director's conclusion that the petitioner's status as one of four finalists in the [REDACTED] cannot meet the plain language requirements of this criterion.

Regarding the [REDACTED] the petitioner submitted evidence indicating that the [REDACTED] 12,000 members are from all over the world and that winners of the Merit Award come from all regions of India. The national scope of a selection process does not automatically equate to national recognition and the petitioner has not submitted independent documentation that demonstrates national recognition of the award by the field. Furthermore, even if the petitioner had submitted sufficient documentation evidencing national recognition of the Merit Award, 8 C.F.R. § 204.5(h)(3)(i) requires receipt of prizes or awards (in the plural), which 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) use the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.³

Accordingly, the record supports the director's conclusion that the petitioner did not meet this criterion.

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

³ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The director concluded that the petitioner did not submit evidence that established this criterion. On appeal, counsel asserts that the news article titled, [REDACTED] which references the petitioner and includes a quote from him, is sufficient to meet this criterion. Counsel further asserts that the article meets the requirement for major media because it is carried on [REDACTED] which counsel describes as an international medical news portal that is the world's largest source of important health news about the latest scientific discoveries. The regulations specifically require that the published material be "about the alien." The submitted article includes a short quote and briefly mentions the petitioner, but it is not focused on the petitioner or his work. On appeal, counsel cites to *Muni v. INS*, 891 F.Supp. 440, 445 (N.D. Ill. 1995) and *Racine v. INS*, 1995 WL 153319 at 6 (N.D. Ill. 1995), and asserts that there is no requirement that an alien be established as one of the stars in the article. The courts in the cited cases noted that the alien need not show that the published material expressly characterizes the alien as one of the stars of the NHL. Neither decision, however, suggests that the article need not be about the alien. The courts in those two decisions did not re-interpret or otherwise depart from the plain language of the regulation that requires published material to be about the petitioner. A brief reference and a short quote in an article does not equate to published material about the petitioner, as required by the regulation. Therefore, the record supports the director's conclusion that the petitioner did not meet this 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. 8 C.F.R. § 204.5(h)(3)(iv).

The director determined that the petitioner submitted sufficient evidence demonstrating he met this criterion. Upon review of the evidence of record and the director's decision, there is sufficient documentation in the record to meet the plain language requirements under 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director's decision concluded that the petitioner did not satisfy 8 C.F.R. § 204.5(h)(3)(v). On appeal, counsel asserts that the petitioner established this criterion as evidenced by his original research, above average citation record, and the high number of invitations for presentations. In addition, counsel asserts that the petitioner's work is the subject of two textbook chapters, further evidencing that his work constitutes a contribution of major significance in the field.

In considering the petitioner's research, the petitioner submitted multiple letters from experts attesting to the impact of his original research in the field. This group consists of letters from the following individuals: Dr. [REDACTED] Associate Professor of [REDACTED] Dr. [REDACTED] Clinical Fellow at [REDACTED]; Dr. [REDACTED] Chairman and

Program Director, Department of Periodontology at [REDACTED] Dr. [REDACTED] Chair of the Department of Dental Specialties at the [REDACTED] and Dr. [REDACTED] Post Graduate Periodontics Program Director at the [REDACTED]

This group of letters discusses several of studies that the petitioner conducted and observe that the results of the analysis provide new literature, new information, and new possibilities for patient treatment. The bulk of the letters attest that patient care has been altered in the field as a result of the petitioner's work. However, some of the letters merely suggest that the petitioner's work has potential for future impact. For example, Dr. [REDACTED] writes: "[the petitioner's] research will change the way that dentistry is practiced on head and neck cancer patients!"

Moreover, while the letters identify the petitioner's area of research, they do not provide much detail on how the petitioner's research will alter the practitioners' plan of treatment. For instance, Dr. [REDACTED] writes about a research topic that the petitioner explored:

This is a very significant observation and changed the way dentists approached rehabilitating head and neck radiation patients. This study restored hope for subjects who have residual deformities following head and neck radiation. The study has followed up patients for longer periods of time and recruited more subjects than most of the studies in the past. This particular study was published in "Clinical Implant Dentistry and Related Research." I certainly expect a lot of citations for this article because it is simply the first of its kind in this field.

While Dr. [REDACTED] comments that the petitioner's research changed the way dentists approached rehabilitation of certain patients, he does not articulate the basis of his observation. It is unclear whether the change is limited to a single clinic, region, or the local community. Regarding Dr. [REDACTED] expectation of a lot of citation for the study, the plain language requirements of this criterion contemplates major contributions that have already impacted the field.

Dr. [REDACTED] also writes about the effect of the petitioner's research on head and neck patients:

His research has a widespread and long-term impact on how clinicians treat head and neck cancers patients and the types of implants that they would use. Prior to [the petitioner], there was very little information available to clinicians. His research helped establish criteria to guide Periodontists and oral surgeons in their treatment of patients . . .

Again, Dr. [REDACTED] observations suggest that the petitioner's data may help guide Periodontists and oral surgeons in their treatment, but does not conclusively state that clinicians have changed their treatment and the effect that change has had on the field as a whole.

Dr. [REDACTED] letter attests to the impact of the petitioner's research on Indian clinicians:

All these accomplishments only further emphasize the fact that his work has had a major impact in terms of enhancing the dental profession's understanding of dental implants in

head and neck cancer patients treated with radiation. His research has particular relevance to the Indian population group as India has one of the highest incidences of head and neck cancers . . . In fact [the petitioner's] research findings have been so significant that Departments of Oral Surgery, Periodontics and Implantology at various institutions in India have modified their treatment protocols for patients who have received head and neck radiation.

Again, the letter does not provide the critical details, such as the actual or approximate number of institutions and whether the scope of the impact have been limited to regional institutions – the type of detail that would help determine whether the petitioner's contributions are contributions of major significance in the field. The plain language of the regulation requires both that the petitioner's contributions be original and of major significance in the field. USCIS must presume that the word "original" and the phrase "major significance" are not superfluous and, thus, that they have 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).

Vague, solicited letters that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).⁴ In addition, while the letters conclude that practitioners have or will change their plan of treatment as a result of the petitioner's original research, the record lacks evidence of widespread implementation, such as hospital guidelines incorporating the petitioner's research results. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. sup. 9, 15 (D.C. Dist. 1990).

As for the above average citation numbers that the petitioner's articles generate, Dr. [REDACTED] Editor-in-Chief of [REDACTED] observes in his June 7, 2012 letter that: "[I]n dentistry there will never be the number of citations that you see in medicine or other medical related specialties. In addition, research in dentistry is disseminated and acknowledged more through international conferences and poster presentations than through citation to publications or abstracts."⁵ An observation that a given work received more than the average number of citations has limited utility as a factor in determining whether a work constitutes a major contribution in the field. The impact of the citations is further limited by the fact that the record identifies only a handful of citations. Furthermore, exceeding the impact factor of the journal in which it appears does not, by itself, demonstrate that an article is a contribution of major significance. More probative would be evidence that the citations are commensurate with those articles that have impacted the petitioner's specialty. Also, while the petitioner participated in various conferences and presentations, the director did not err in concluding that presenting one's work at conferences does not persuasively distinguish the petitioner from other competent periodontists or researchers. At issue is the impact of those presentations upon dissemination in the field.

⁴ 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.

⁵ The record reflects that Dr. [REDACTED] submitted another letter in support of the petitioner, which is dated October 25, 2012.

Lastly, counsel asserts that the petitioner's work was the basis of two textbook chapters and that such evidence is indicative of original contributions of major significance in the field. While counsel asserts that the textbook chapters serve as a basis of knowledge and training in the field of periodontology for researchers, periodontists, dental residents, and even physicians nationwide, the record does not include evidence demonstrating wide-spread usage of the two textbooks in the field. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998).

For all of the above reasons, the petitioner did not meet this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director determined in his decision that the petitioner met this regulatory criterion and the record supports the director's conclusions in this regard.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The director concluded that the petitioner did not meet the requirements of 8 C.F.R. § 204.5(h)(3)(viii). On appeal, counsel asserts that the evidence of the petitioner's role as a chief resident while training at the [REDACTED] is sufficient to demonstrate that he has performed in a leading or critical role. Dr. [REDACTED] Former Chairman of the Department of Dental Specialties at the [REDACTED] in his letter, observes that the Chief Resident position of the [REDACTED] is a leading or critical role in the institution. Dr. [REDACTED] also notes that the [REDACTED] has a "reputation as one of the best medical facilities in the world." In support of this criterion, counsel also references the October 25, 2012 letter from Dr. [REDACTED] which states that the petitioner wrote a work that became a part of the [REDACTED] and that the work "has not only benefited the dental department but also the whole organization."

While the [REDACTED] may have a distinguished reputation, it does not follow that every Chief Resident of every fellowship program in every medical specialty or department of the [REDACTED] plays a leading or critical role for the [REDACTED] as a whole. Moreover, while Dr. [REDACTED] attests to the fact that the [REDACTED] has a reputation as one of the best medical facilities in the world, neither his letter nor other evidence in the record suggests that the Department of Dental Specialties, of which the Division of Periodontics is one part, has an independent distinguished reputation. Regarding the position of Chief Resident, Dr. [REDACTED] writes: "This position requires [the petitioner] to lead, counsel and support other residents, teach medical students, assist in administration of the residency program, and provide patient care. . . The Chief Resident reports to both the program director and the chairman of the dental department and is the first to supervise and review the performance of other residents enrolled in the program." This hierarchy does not reflect that the petitioner played a leading role for the

Department of Dental Specialties at the [REDACTED]. At best, the petitioner played a critical role for the residency program within the department.

Regardless, the petitioner did not establish that he performed a critical role for the [REDACTED] as a whole. In addition, the plain language of the regulation requires that an alien perform a leading or critical role for organizations or establishments (in the plural). As noted above, such a requirement is consistent with the statutory requirement for extensive evidence and not all of the criteria outlined in the regulation use the plural. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning.

Accordingly, the petitioner did not meet this criterion because he did not perform a leading or critical role for an organizations or establishments (in the plural) with distinguished reputations.

B. Summary

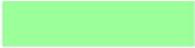
The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Had the petitioner 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.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the

⁶ 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).



regulatory requirement of three types of evidence. *Id.* at 1122. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.