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



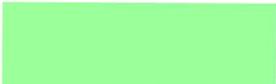
U.S. Citizenship  
and Immigration  
Services



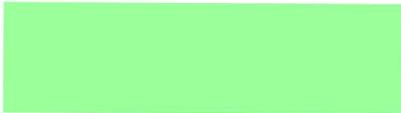
DATE: **APR 08 2014**

Office: TEXAS SERVICE CENTER

FILE:



IN RE:           Petitioner:  
                  Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on September 13, 2013, 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 as an assistant professor of engineering. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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, the petitioner claims that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## I. LAW

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

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

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

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

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

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien’s sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

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

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

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

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

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

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Moreover, it is the petitioner’s burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, goes beyond the awarding entity.

In the petitioner’s cover letter that he submitted at the initial filing of the petition, the petitioner claimed that he received the Young Engineer of the Year Award in [REDACTED] from the [REDACTED]. In order to support his claim, the petitioner submitted a certificate from the [REDACTED] Annual Geotechnical Engineering Conference reflecting that he received the Young Engineer Paper in [REDACTED] presented by [REDACTED] and the [REDACTED]. The petitioner has not demonstrated that he received the Young Engineer of the Year Award; there is no evidence establishing that the Young Engineer Paper is the same award as the Young Engineer of the Year Award. Although the petitioner submitted a recommendation letter from Dr. [REDACTED] who indicated that the petitioner received the Young Engineer Award, Dr. [REDACTED] based his opinions by reviewing the petitioner’s curriculum vitae rather than any personal knowledge of the petitioner receiving the award. 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)). The AAO must look to the plain language of the documents. See *Matter of Izummi*, 22 I&N Dec. 169, 185 (Comm’r 1998). Moreover, the petitioner did not submit any documentary evidence demonstrating that the Young Engineer Paper is a nationally or internationally recognized prize or award for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Although the petitioner did not demonstrate that he received the Young Engineer of the Year Award, the petitioner did submit a screenshot from [REDACTED] website regarding the nominating requirements. However, the petitioner did not submit any documentary evidence beyond the awarding entity to establish that it is a nationally or internationally recognized award for excellence in the petitioner’s field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Similarly, the petitioner claimed in his cover letter at the initial filing of the petition that he received the [REDACTED] from the [REDACTED]. The petitioner submitted a letter from [REDACTED] congratulating the petitioner for his selection “as an [REDACTED] to participate in the [REDACTED] Teaching Workshop at [REDACTED] from July 12-17, 2009.” In response to the director’s request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted a screenshot from [REDACTED] website regarding the [REDACTED] in [REDACTED]. The petitioner has not demonstrated that [REDACTED] is the same as [REDACTED] therefore the petitioner did not

establish that he received the [REDACTED]. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The AAO must look to the plain language of the documents executed by the petitioner. *Matter of Izummi*, 22 I&N Dec. at 185. Even if the petitioner established that he received the [REDACTED] which he did not, the petitioner did not submit any documentary evidence beyond the awarding entity to establish that it is a nationally or internationally recognized prize or award for excellence in the field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i). Regarding the [REDACTED] based on [REDACTED] letter, the petitioner was selected to be a fellow in order to attend and participate in a teaching workshop rather than receiving a nationally or internationally recognized award for excellence in the field.

The petitioner also claimed eligibility for this criterion based on his receipt of the [REDACTED]. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, postdoctoral fellowships, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Moreover, although they may be prestigious, fellowships, scholarships, and other sources of competitive financial support are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. Receiving funding for one's research and academic training does not constitute receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to students seeking to further their research, training, and experience. In addition, the [REDACTED] serves as a grant to fund a researcher's work. The past achievements of the principal investigator are a factor in grant proposals; the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize excellence. Furthermore, although the petitioner submitted the eligibility requirements for the fellowship, the petitioner did not submit any documentary evidence beyond [REDACTED] to demonstrate that the fellowship is considered a nationally or internationally recognized prize or award for excellence in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i).

For the reasons discussed above, the petitioner did not demonstrate that he received any nationally or internationally recognized prizes or awards for excellence in the field of endeavor pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner did not establish that he meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

At the initial filing of the petition, the petitioner claimed eligibility for this criterion based on his memberships with the [REDACTED]

[REDACTED] In response to the director’s request for additional evidence, the petitioner indicated that he was accepting the director’s decision that his memberships with these associations did not qualify under the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Instead, the petitioner requested that the director consider the petitioner’s participation with the [REDACTED] and the [REDACTED]

On appeal, the petitioner did not claim eligibility for this criterion based on his memberships with [REDACTED]. Therefore, the petitioner abandoned these prior claims. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Regarding [REDACTED] the petitioner submitted an email from Dr. [REDACTED] notifying the petitioner of the committee’s approval of his request to join the committee. In addition, the petitioner submitted a letter from Dr. [REDACTED] who indicated that [REDACTED] “is constituted by the [REDACTED] [REDACTED]. Further, Dr. [REDACTED] claimed that the petitioner “became a member of this important committee because his scientific achievements were judged as outstanding by other national experts in this field.” However, Dr. [REDACTED] did not identify the petitioner’s contributions that were deemed to be outstanding and did not identify the national experts. 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*, 1997 WL 188942, at \*5 (S.D.N.Y.).

The petitioner also submitted the [REDACTED] *Official Register* for [REDACTED] and referred to pages 466-488. According to the [REDACTED] Bylaws, membership is open to individuals who can demonstrate at least one of the following:

1. A baccalaureate degree in engineering, the physical sciences, the life sciences or mathematics; or
2. Two years of full-time equivalent study in any discipline at a college or university plus five years of experience in the geo-industry; or
3. Eight years of experience in the geo-industry; or
4. Any ASCE member in good standing who enrolls in the Geo-Institute.

The requirements to be a member of the [REDACTED] do not reflect outstanding achievements as an essential condition for membership. The bylaws also reflect that all members in good standing may participate on [REDACTED] committees. Moreover, there is no evidence reflecting that recognized national or international experts judge the outstanding achievements of committee candidates. Again, membership requirements based on employment or minimum education or experience do not satisfy this criterion as such requirements do not constitute outstanding achievements. Furthermore, the [REDACTED] bylaws do not support Dr. [REDACTED]'s claims that the petitioner was granted membership because of his "scientific achievements." If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). The petitioner did not establish that membership with [REDACTED] requires outstanding achievements as judged by recognized national or international experts in their disciplines or fields consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Regarding [REDACTED] the petitioner submitted an email, dated March 20, 2012, from Dr. [REDACTED] about an [REDACTED] committee meeting in Oakland, California. The petitioner also submitted another email, dated July 2, 2013, from Dr. [REDACTED] regarding interest in an [REDACTED] subcommittee with an attached email, dated June 4, 2013, from Dr. [REDACTED] regarding the goals and topics of the subcommittee. The petitioner also referred to the [REDACTED] *Official Register* for [REDACTED] that was discussed above. The petitioner did not submit any other documentation regarding [REDACTED]. The documentation submitted by the petitioner does not reflect that membership in [REDACTED] requires outstanding achievements of its members as judged by recognized national or international experts consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Even if the petitioner were to submit supporting documentary evidence showing that [REDACTED] and [REDACTED] meet the elements of this criterion, which he has not, they are committees, not associations. For both committees, the relevant association is [REDACTED]. The petitioner does not claim that his membership in [REDACTED] is qualifying. Moreover, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of

the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in more than one association. 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 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. *Cf. 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).

Accordingly, the petitioner did not establish that he meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. In response to the director’s request for additional evidence, the petitioner indicated that he was accepting the director’s decision that the citations of his work did not qualify under the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and did not further claim eligibility for this criterion. On appeal, the petitioner did not contest the findings of the director for this criterion or offer additional arguments. Therefore, the petitioner abandoned these prior claims. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1 (finding the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner did not establish that he meets 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.*

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner established that he meets this criterion.

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Accordingly, the petitioner established that he meets this criterion.

### B. Summary

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

### III. CONCLUSION

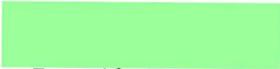
The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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

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<sup>3</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).



The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.