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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: FEB 07 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

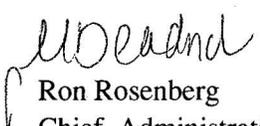
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary 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 religious studies. The director determined that the petitioner had not established the requisite extraordinary ability and did not submit extensive documentation of 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, counsel claims that the beneficiary meets the regulatory requirements. In addition, counsel argues that the director erred in denying the petition without first issuing a request for evidence (RFE) in violation of a USCIS policy memorandum. The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

In addition, USCIS Policy Memorandum PM-602-0085, states:

If the totality of the evidence submitted does not meet the applicable standard of proof, and the adjudicator determines that there is no possibility that additional

information or explanation will cure the deficiency, then the adjudicator shall issue a denial.

A review of the record reflects that the petitioner electronically filed Form I-140, Petition for Alien Worker, on December 21, 2012. At that time, the petitioner was informed that it had to mail any supporting documentation. On February 4, 2013, the director issued a request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) and informed the petitioner that it had not submitted the supporting documentation and was affording the petitioner an additional opportunity to do so. On April 24, 2013, the director received the response along with the supporting documentation, and the director adjudicated the petition based on the submitted evidence and denied the petition on June 6, 2013. The director did not deny the petition because initial evidence was missing; rather the submitted evidence did not establish eligibility for the benefit, and the director previously issued a request for evidence. As such, the director complied with 8 C.F.R. § 103.2(b)(8)(ii) and (iii). Furthermore, 8 C.F.R. § 103.2(b)(8)(ii) and (iii) provides for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. In this case, the director exercised his discretionary authority and denied the petition based on the evidence submitted by the petitioner and finding that evidence did not establish eligibility for the benefit, and that there was no possibility that additional information or explanation would demonstrate eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner had the opportunity to submit any evidence in response to the request for additional evidence even without the director's specific request. On appeal, counsel has, in fact, supplemented the record and made further arguments regarding the beneficiary's eligibility. Therefore, it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence. Regardless, the AAO will review the record in its entirety based on counsel's appellate arguments regarding the beneficiary's eligibility. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

#### 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)).

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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).

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 and then will conduct a final merits determination.

## II. ANALYSIS

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

*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 the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary's eligibility for this criterion based on the following:

1. A \$25,000 grant to the petitioner from the [REDACTED]
2. A \$300,000 grant to the petitioner from the [REDACTED] and [REDACTED]
3. A \$50,000 grant to the petitioner from the [REDACTED]

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 eligibility for every element of this criterion. Not only must the petitioner demonstrate the beneficiary’s receipt of prizes and awards, it must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that the beneficiary’s prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

In the director’s decision, he found that “the beneficiary was not the recipient of the grant money awarded by any of the noted institutions” and “[t]he grants specifically designate the petitioner as the recipient of the grant funds.” A review of the petitioner’s documentation confirms the director’s findings. For example, the petitioner submitted a letter from [REDACTED] who stated that [REDACTED] “appropriated the sum of \$25,000 for a grant to the [petitioner],” a letter from [REDACTED] who stated that “the Directors of the [REDACTED] have approved a three-

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

year grant of \$300,000 to the [petitioner],” and a letter from [redacted] who stated that the [redacted] “has awarded the [petitioner] a grant from the amount of \$50,000.”

On appeal, counsel claims:

[The beneficiary] was the author of the grants, the money awarded included him as a recipient, and the money went directly towards projects that [the beneficiary] conceived, organized and executed. The fact that the grants were addressed to [the petitioner’s] President [redacted] does not detract from the fact that the grants were issued to [the beneficiary] and in furtherance of his academic program. Finally, it is relevant that foundation guidelines typically prohibit award of grants to an individual.

In addition, the petitioner submitted a letter from [redacted] who provided general background information regarding its grant selection process, and a screenshot from [redacted] website indicating that it is prohibited or rarely funds individuals.

Although the petitioner’s documentation reflects that the beneficiary prepared the grant applications and the awarding entities’ decisions were based on the beneficiary’s proposals, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the *alien’s receipt*” (emphasis added) of prizes or awards. None of the grants were awarded to the beneficiary; rather the grants were awarded to the petitioner. Prizes or awards that were not specifically presented to the beneficiary are not consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The petitioner did not submit documentation indicating that the beneficiary received any nationally or internationally recognized prizes or awards for excellence in the field.

Moreover, the director found that the petitioner did not establish that the grants were nationally or internationally recognized prizes or awards for excellence in the field of endeavor. On appeal, counsel claims that [t]he evidence itself clearly indicates how these grants are distinguishable from the norm” and “that all three foundations are established, prestigious award granting organizations, and competition to obtain a grant is at least national in scale.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the prizes or awards be nationally or internationally recognized for excellence in the field. Hence, the petitioner must demonstrate that the prizes or awards are themselves nationally or internationally recognized for excellence rather than establishing the reputation of the awarding entities. Here, the petitioner did not submit any documentary evidence establishing that the grants are nationally or internationally recognized prizes or awards for excellence in the field. Furthermore, the petitioner did not demonstrate that the grants were based on excellence rather than financial need or assistance. In general, grants fund future research or prospective programs rather than to honor or recognize past achievements.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner demonstrates the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in his field. However, petitioner did not establish that the beneficiary has received any prizes or awards, and that they are nationally or internationally recognized for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner did not establish that the beneficiary 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 the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary's eligibility for this criterion based on the following:

1. A screenshot entitled, [REDACTED] June 5, 2009, by [REDACTED]
2. A screenshot entitled, [REDACTED] April 7, 2009, by [REDACTED]
3. A screenshot entitled, [REDACTED] November 6, 2007, by an unidentified author, [REDACTED] and [REDACTED]
4. A screenshot entitled, [REDACTED] August 23, 2010, by an unidentified author, [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup> Furthermore, the plain language of the

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

Counsel initially indicated that “one of [the beneficiary’s] publications was specifically recognized in the book, [REDACTED]” As the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the beneficiary relating to his work material that cites to the beneficiary’s work does not meet the plain language of this criterion because it does not discuss the beneficiary and is not about the beneficiary relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the beneficiary’s work. Thus, while citations to the beneficiary’s work are not relevant to this criterion, they will be considered below as they relate to the significance of the beneficiary’s original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding items 1 and 2, the screenshots are not about the beneficiary relating to his work consistent with the plain language of the regulation at 8 C.F.R. 204.5(h)(3)(iii). Rather, the screenshots are about [REDACTED]. Although the screenshots quoted the beneficiary, they are not about the beneficiary relating to his work in the field. Articles and screenshots that quote the beneficiary but do not provide any discussion about the beneficiary do not qualify as published material pursuant to the plain language of this regulatory criterion. Moreover, regarding [REDACTED] the petitioner submitted a screenshot regarding the [REDACTED]. However, the petitioner did not submit any documentary evidence regarding [REDACTED] so as to demonstrate that it is considered a major medium. Furthermore, the petitioner did not demonstrate that articles posted on the Internet from a printed publication or from an organization are automatically considered major media. The petitioner did not submit independent, objective evidence establishing that the websites are considered major media. 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 self-serving assertions on the cover of a magazine as to the magazine’s status are not sufficient evidence of major media). Many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. The petitioner did not establish that international accessibility by itself is a realistic indicator of whether a given website is “major media.”

Regarding items 3 and 4, the screenshots are announcements for the radio station’s programs. While the announcements indicate that the beneficiary will be involved in the discussions, they are not published material about the beneficiary relating to his work. Instead, regarding item 3, the announcement was about the petitioner’s launch of the [REDACTED] and regarding item 4, the announcement was about the role of religion in the modern American’s society. Other than indicating that the beneficiary would participate in the discussions or panels, there are no discussions about the beneficiary relating to his work. Further, radio and television interviews do not equate to “published material” consistent with the plain language of this regulatory criterion. Moreover, neither item includes the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Finally, on appeal, the petitioner submitted screenshots from [REDACTED] website. However, the petitioner did not submit any

independent, objective evidence establishing that [REDACTED] is considered major media. *See Braga v. Poulos*, No. CV 06 5105 SJO.

The petitioner's documentary evidence does not reflect published material about the beneficiary relating to his work in professional or major trade publications or other major media.

Accordingly, the petitioner did not establish that the beneficiary 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 the beneficiary's 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 the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner established that the beneficiary meets this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner did not establish the beneficiary's eligibility for this 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." Here, the evidence must be reviewed to see whether it rises to the level of original 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

On appeal, counsel claims that the director "failed to consider [the beneficiary's] major contributions as a founding member towards establishing the [REDACTED]. The petitioner did submit Volume 1, Issue 1 of the [REDACTED] reflecting that the beneficiary is listed as an editorial board member. Moreover, the petitioner submitted a support letter indicating that the beneficiary "serves on the editorial board." However, there is no evidence reflecting that the beneficiary was a founding member or was involved in the creation of the journal so as to demonstrate an original contribution. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). The focus is the plain language

of the documents executed by the petitioner and not subsequent statements of counsel. *Matter of Izummi*, 22 I&N Dec. 169, 185 (Comm'r 1998).

Regardless, the petitioner did not submit any documentary evidence demonstrating the impact or influence that the journal has had on the field, so as to establish an original contribution of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). The beneficiary's reference and recommendation letters, which will be discussed further below, do not mention the beneficiary's involvement with the [REDACTED]

[REDACTED] Moreover, the beneficiary's participation as an editorial board member has already been considered and found to meet the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(iv). Evidence relating to or even meeting the judging criterion is not presumptive evidence that the beneficiary also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Counsel also claims on appeal that the director "failed to consider [the beneficiary's] participation as an expert commentator for the [REDACTED] and [REDACTED]" Counsel does not explain or refer to any evidence demonstrating how the beneficiary's quotations or radio programs have been of major significance in the field. Being quoted in newspapers or participating in radio programs is insufficient to meet the plain language of this regulatory criterion without documentary evidence reflecting that such contributions have been of major significance in the field.

A review of the record of proceeding also reflects that the petitioner submitted documentary evidence reflecting that the beneficiary's work has been cited two times by others in their own work. While the number of total citations is a factor, it is not the only factor to be considered in determining eligibility for this criterion. Generally, the number of citations is reflective of the beneficiary's original findings and that the field has taken some interest to the beneficiary's work. However, it is not an automatic indicator that the beneficiary's work has been of major significance in the field. The beneficiary's two citations are not reflective that his work has been of major significance in the field. Furthermore, the petitioner did not submit any documentary evidence demonstrating that the beneficiary's work has been unusually influential, such as articles that discuss in-depth the beneficiary's work or credit the beneficiary with influencing or impacting the field in a substantial way.

Similarly, the petitioner submitted documentary evidence reflecting that the beneficiary has attended and participated in numerous conferences and workshops. However, 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. The petitioner did not submit any documentary evidence showing that any of the beneficiary's specific conference presentations are frequently cited by others in his field, have significantly impacted the field, or otherwise rise to the level of contributions of

major significance in the field. While presentation of the beneficiary's work demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, the petitioner has failed to establish the impact or influence of the beneficiary's presentations beyond those in attendance so as to establish that his work has been of major significance in the field.

Finally, the petitioner submitted five recommendation letters. At the outset, a review of the letters either contain identical language or virtually the same language when describing the beneficiary's achievements and abilities, suggesting the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Because the letters appear to have been drafted by someone other than the purported authors, the AAO finds the letters to possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989).

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* 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 opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Based on the extensive similarities between the above letters, USCIS may accord them less weight.

Apart from the questions raised by nearly identical wording appearing in multiple letters, the letters do not provide specific information to demonstrate that the beneficiary's contributions have been of major significance in the field. For example, three of the letters briefly describe the beneficiary's contributions to a [REDACTED] however they do not specifically explain how the beneficiary's contributions are considered to be of major significance in the field. Moreover, four of the recommendation letters almost identically indicate the beneficiary's contributions to the petitioner. Although the beneficiary's role with the petitioner is more applicable to the leading or critical role criterion

pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and discussed later in this decision, the letters do not explain how the beneficiary's contributions to the petitioner are considered to be original contributions of major significance in the field as a whole rather than being limited to the petitioner. Similarly, some of the letters discuss the beneficiary's experience at teaching specific courses at various universities in the United States such as the [REDACTED]. Again, the letters do not indicate the significance of the beneficiary's teaching beyond the individual courses and universities, so as to reflect original contributions of major significance in the field.

The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also 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)). Accordingly, the content of the letters is insufficient to establish the beneficiary's eligibility for the immigration benefit sought.

While those familiar with the beneficiary describe him as "a scholar of extraordinary ability" and "internationally recognized," there is insufficient documentary evidence demonstrating that the beneficiary's work is of major significance. This regulatory criterion not only requires the beneficiary to make original contributions, the regulatory criterion also requires those contributions to be significant. Vague, solicited letters that repeat the regulatory language but do not explain how the beneficiary's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Again, 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]." Without additional, specific evidence showing that the beneficiary's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that the beneficiary meets this criterion.

Accordingly, the petitioner failed to establish that the beneficiary 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 the beneficiary's 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 the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Accordingly, the petitioner established that the beneficiary meets this criterion.

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

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)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for *organizations or establishments* that have a distinguished reputation" (emphasis added). However, a review of the record of proceeding does not reflect 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)(viii) for the reasons outlined below.

The regulatory 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 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).

A review of the record of proceeding does not reflect that the beneficiary performed in a leading or critical role for more than one organization or establishment. In counsel's initial cover letter, counsel claimed that the beneficiary performed in a leading or critical role for [REDACTED]

[REDACTED] and in the [REDACTED]. A review of the previously discussed reference letters reflect brief references to the beneficiary's education and employment experience but do not indicate that the beneficiary performed in a leading or critical role for any

of the organizations or establishments. The petitioner did not submit any documentary evidence from [REDACTED] to support the brief claims in the recommendation letters. The authors of the recommendation letters do not indicate that they had first-hand knowledge of the beneficiary's roles with the organizations or establishments; rather their opinions appear to be based on documentation that was given to them by the petitioner or beneficiary as the verbiage is identical. For example, Dr. [REDACTED] and Dr. [REDACTED] identically claimed that regarding the [REDACTED] the beneficiary "was employed in an essential capacity at the University, in that [he] was able to bring a variety of academic disciplines together in conversation." Dr. [REDACTED] and Dr. [REDACTED] do not indicate how they were aware of the beneficiary's role, and the petitioner did not submit any documentary evidence from [REDACTED] to support Dr. [REDACTED] claims. As the letters possess diminishing reliability and probative value, the petitioner has not established the beneficiary's role with [REDACTED] and more importantly that he performed in a leading or critical role.

The burden is on the petitioner to establish that the beneficiary meets every element of this criterion. Without documentary evidence demonstrating that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not established that the beneficiary meets the plain language of this regulatory criterion. Therefore, the decision of the director for this criterion is withdrawn.

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

#### B. Summary

Although the director determined that the petitioner demonstrated the antecedent regulatory requirement of three types of evidence, as discussed on appeal, the petitioner only established the beneficiary's eligibility for two of the categories of evidence on appeal.

#### C. Final Merits Determination

In accordance with the *Kazarian* opinion, a final merits determination will be conducted 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," 8 C.F.R. § 204.5(h)(2); 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." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner met the plain language of two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the final merits determination, the totality of the evidence must be evaluated to determine the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the beneficiary has peer reviewed articles and has authored scholarly work. However, the personal accomplishments of the beneficiary fall short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

As indicated above, the petitioner established that the beneficiary met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The petitioner submitted documentation reflecting that the beneficiary served on the [REDACTED] at the [REDACTED] since 2011 and is a member of the editorial review board for [REDACTED] since 2012. Peer review is a routine element of the process by which articles are selected for publication in literary or scholarly journals or for presentation at literary conferences. Occasional and recent participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of professors or scholars who publish themselves in journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference, it cannot be concluded that the beneficiary is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Moreover, the beneficiary's recent peer review experience does not reflect sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(3).

Furthermore, in comparison to the beneficiary's accomplishments, Dr. [REDACTED] has been an editorial consultant for the [REDACTED] since 1999, a member of the Advisory Board of the [REDACTED] from 1993-1999, a member of the Advisory Board of the [REDACTED] from 1991-1993, and a member of the editorial board for [REDACTED] since 1990.

The petitioner established that the beneficiary met the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi) based upon the submission of three scholarly articles that were published at the time of the filing of the petition. The petitioner also submitted two opinion articles written for the [REDACTED] and four works that have never been published. However, a comparison of the beneficiary's references shows that Dr. [REDACTED] has authored 15 books and 63 articles, and Dr. [REDACTED] has authored 14 books or chapters and 22 articles. The beneficiary's publication rate does not demonstrate a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is inherent to scholars, citation history or other evidence of the impact of the beneficiary's articles will be evaluated to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the beneficiary would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the beneficiary may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner submitted documentary evidence reflecting that the beneficiary's work has been cited two times. These citations are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Finally, the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Again, the petitioner claimed the beneficiary's eligibility for the awards criterion without submitting any evidence of nationally or internationally recognized prizes or awards received by the beneficiary. In addition, the petitioner claimed the beneficiary's eligibility for the published material criterion based on the submission of two articles that quoted the beneficiary and two radio station announcements. Furthermore, the petitioner claimed the beneficiary's eligibility for the original contributions criterion based on recommendation letters that contained identical language and did not identify any original contributions of major significance in the field. Finally, regarding the leading or critical role criterion, the petitioner established the beneficiary's leading or critical role with one establishment. Such evidence does not equate to "extensive

documentation” and is not demonstrative of this highly restrictive classification. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376.

The regulation at 8 C.F.R. § 204.5(h)(3) requires “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise.” While the petitioner submitted documentation demonstrating that the beneficiary has authored some material and reviewed the work of others, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994); 56 Fed. Reg. at 60899. In *Matter of Racine*, 1995 WL 153319 at \*1, \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Likewise, it does not follow that the petitioner who has not submitted evidence that distinguishes the beneficiary from others in his field, should necessarily qualify for approval of an extraordinary ability employment-based visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

The conclusion by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that the beneficiary’s achievements at the time of filing the petition were commensurate with sustained national or international acclaim, and that he was among that small percentage at the very top of the field of endeavor.

### 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.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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.