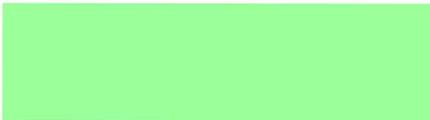




U.S. Citizenship
and Immigration
Services

(b)(6)



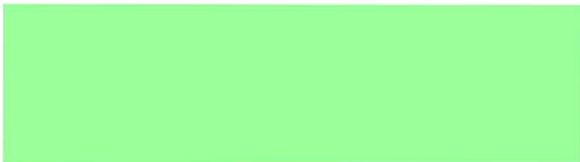
DATE: **JAN 28 2014** Office: NEBRASKA SERVICE CENTER



IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



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

NON-PRECEDENT DECISION

Page 2

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on April 9, 2013. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on May 8, 2013. The appeal will be dismissed.

According to part 6 of the petition and counsel's June 12, 2012 letter, initially filed in support of the petition, the petitioner seeks classification as an alien of extraordinary ability as an "expert in secure wireless communication and a Software Engineer in Test," 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 that the petitioner did not establish his 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; 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)-(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 submits a brief and the following documents: (1) an article entitled "[redacted]"; (2) a letter from [redacted] about [redacted]; (3) a letter from [redacted] about [redacted]; (4) a June 6, 2013 letter from [redacted] Computer Engineering Department at [redacted]; (5) an online printout about Professor [redacted] and his curriculum vitae; (6) a June 6, 2013 letter from [redacted] Engineering at [redacted] curriculum vitae. For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not met at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3) with relevant, probative evidence, and in the final merits determination, he has not demonstrated that he is one of the small percentage who are at the very top of the field and has not demonstrated his sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the petitioner's appeal must be dismissed.

I. THE 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 –

NON-PRECEDENT DECISION

Page 3

- (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.

United States 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. 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit 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 the 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." *Kazarian*, 596 F.3d 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 did not 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)." *Kazarian*, 596 F.3d 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 case, the petitioner has not shown that he meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, in the final merits determination, the petitioner has not shown that he is one of a small percentage who have risen

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 (vi).

to the very top of the field or that he has sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can meet the basic eligibility requirements by presenting evidence of his receipt a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award, at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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).

In his April 9, 2013 decision, the director concluded that the petitioner did not meet this criterion. The record includes a certificate showing that the petitioner won the [REDACTED] at the 2010 [REDACTED]

[REDACTED]

Chair of the symposium, the symposium is one of eleven symposiums at the [REDACTED], and in 2010, it received “over 210 submission and 84 were accepted.” [REDACTED] further provides that the petitioner’s paper won the [REDACTED], which “honors the top paper in each symposium based on the topic of the paper and its potential impact to that research area, timeliness, scientific rigor, novelty and originality and quality of presentation.” The director concluded that the petitioner has not provided evidence showing that “the award is coveted by the best and most distinguished members of the discipline.” On appeal, counsel has not specifically challenged the director’s finding as relating to this criterion and the record supports the director’s findings.

Moreover, even assuming *arguendo* that the [REDACTED] constitutes an example of the petitioner’s receipt of a qualifying prize or award, the petitioner has not met this criterion. Specifically, the plain language of the criterion requires evidence of the petitioner’s receipt of lesser nationally or internationally recognized prizes or awards, in the plural, for excellence in the field of endeavor, consistent with the statutory requirement for extensive documentation. See 8 C.F.R. § 204.5(h)(3)(i); see also section 203(b)(1)(A)(i) of the Act. Even if the petitioner’s [REDACTED] constitutes his receipt of one qualifying prize or award, this single example is insufficient to show his receipt of lesser nationally or internationally recognized prizes or awards, in the plural, for excellence in the field of endeavor.

² The petitioner does not claim that it has satisfied the regulatory categories of evidence not discussed in this decision.

NON-PRECEDENT DECISION

Page 5

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(i).

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).

In his April 9, 2013 decision, the director concluded that the petitioner met this criterion. The evidence in the record supports the director's finding. Accordingly, the petitioner has submitted evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has met this criterion. See 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).

In his April 9, 2013 decision, the director concluded that the petitioner met this criterion. The evidence in the record does not support this finding. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The evidence in the record, including the reference letters, shows that while the petitioner has made one qualifying contribution, as relating to the "structured coding approach," the evidence is less persuasive that his others contributions constitute contributions of major significance in the field. For example, as relating to the "structured coding approach," [REDACTED], a Professor of Electrical and Computer Engineering at the [REDACTED], states that the petitioner's "structured coding approach" . . . is now widely used to predict transmission rates when legitimate network users cooperate to jam the eavesdropper to ensure secure communication." According to [REDACTED] the petitioner's methodology "is now widely recognized as a powerful tool in predicting secure transmission rate and has been in several follow-up works by other researchers." According to [REDACTED], the petitioner's findings relating to using a "structured code approach" have "significantly advanced the field at the international level and have been adopted by other researchers over previous long-adhered-to traditional approaches." Based on the evidence in the record, including evidence not specifically referenced here, the petitioner has shown that his work relating to the "structured coding approach" constitutes an original scientific contribution of major significance in the field of secure wireless communication.

The petitioner, however, has not shown that he meets this criterion. Specifically, the plain language of the criterion requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. See 8 C.F.R. § 204.5(h)(3)(v); see also section

NON-PRECEDENT DECISION

Page 6

203(b)(1)(A)(i) of the Act. While the petitioner's work relating to the "structured coding approach" may constitute a single example of a qualifying contribution, the record lacks a second qualifying contribution, as required by the plain language of the criterion.

The record includes a number of reference letters discussing the petitioner's work on the use of an "untrusted relay." Although the evidence shows that the petitioner's work in this area is original, the evidence does not establish that this work constitutes a contribution of major significance in the field. Specifically, to show the importance of the work, the petitioner and his references note that the petitioner has authored a number of articles. The regulations contain a separate criterion regarding the authorship of published articles. See 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. In other words, publications are not sufficient evidence under the regulation at 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).³

The petitioner has also presented evidence showing that other authors have cited the petitioner's articles relating to the use of an "untrusted relay," and the articles have inspired additional studies and research. Online printouts from [REDACTED], which the petitioner initially submitted to support the petition, show that his article "[REDACTED]" had garnered a moderate number of citations, a few of which the petitioner authored. In response to the director's request for evidence (RFE), the petitioner submitted an updated printout from scholar.google.com, showing additional citations to the petitioner's article. The [REDACTED] document, however, includes citations that postdate the petitioner's filing of the petition on June 14, 2012. As such, this document does not establish the petitioner's eligibility, because the petitioner must demonstrate eligibility for the visa at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of future citations at a level consistent with contributions of major significance. See also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

The petitioner's other contributions relate to the "outer bound for the Gaussian two-way wiretap channel" and "multi-antenna wireless network." Although the evidence shows that the petitioner's work in these areas is original, the evidence does not establish that the work constitutes a contribution of major significance in the field, such that it fundamentally changed or affected the field as a whole. Specifically, the evidence shows that other authors have cited the petitioner's articles on these areas, the petitioner's work has had some effect on the research of other scientists, and that his work has improved one area in the field. The petitioner, however, has not established that these events are

³ In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

NON-PRECEDENT DECISION

Page 7

indicative of major significance in the field as a whole. Rather, they establish that the petitioner's work is applicable and contributes to the overall progress in a field that is continually undergoing improvement. With regard to the petitioner's level of impact, [REDACTED] states that the petitioner's work "will have significant impact in showing [] how to protect our national computing and communication resources, as well as making our communications more efficient." This prediction of the work's future importance signifies that the petitioner's work has not yet had a significant impact in the field at a level consistent with a contribution of major significance.

Based on a review of all the evidence in the record, the petitioner has not submitted sufficient evidence showing that he has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of secure wireless communication. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

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).

In his April 9, 2013 decision, the director concluded that the petitioner met this criterion. The evidence in the record supports this finding. Accordingly, the petitioner has submitted evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

B. Final Merits Determination

Based on the evidence in the record, the petitioner has not submitted the requisite evidence under at least three evidentiary categories. Although the petitioner has submitted sufficient evidence regarding the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the petitioner meets no other criteria. Notwithstanding this finding, in accordance with the *Kazarian* opinion, given that the director's sole basis of denial was a final merits determination, the AAO will also conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) his "level of expertise indicating that [he] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that he "has sustained national or international acclaim and that his [] achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

The petitioner received his Ph.D. in Electrical Engineering in August 2010, approximately two years before filing the petition. According to his curriculum vitae and other evidence of record, after receiving his degree, he began working for [REDACTED] as a Software Development Engineer in Test (SDET) pursuant to a nonimmigrant visa for a specialty occupation worker (H1-B). He was working as an SDET II at the time of filing. According to his May 2011 article in [REDACTED], the petitioner remained a student member of [REDACTED] at that time. The petitioner has served as a volunteer technical referee and manuscript reviewer at the request of

NON-PRECEDENT DECISION

Page 8

conference organizers and journal editors. He has coauthored book chapters, articles and conference presentations, one of which the conference organizers recognized with an award for its potential and others of which have individually garnered moderate citation as of the date of filing. Commensurate with his field of electrical engineering, a practical science, he has produced practical results, some of which others are applying at varying levels. For the reasons discussed below, these achievements, while consistent with a skilled and successful electrical engineer, are not sufficiently indicative of national or international acclaim and do not place him within that small percentage at the top of the field.

With regard to the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Specifically, the evidence in the record supports the director's finding that the petitioner did not submit sufficient evidence to show that his [REDACTED] constituted a lesser nationally or internationally recognized prize or award of excellence in the field of secure wireless communication. In addition, the petitioner's achievement of receiving a [REDACTED] does not match the achievements of at least one of his references. [REDACTED] curriculum vitae indicates that he has been awarded five [REDACTED]. Moreover, the award was for the potential impact of the petitioner's paper. The petitioner has not established the ultimate impact of this paper. Specifically, at the time of filing his petition, this paper had garnered a lower number of citations as compared to some of the petitioner's other publications.

With regard to the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), although the petitioner meets this criterion, he has not shown that this evidence is indicative of national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of national or international acclaim. *See Kazarian*, 596 F.3d at 1122. [REDACTED] provides that the petitioner "has been invited to serve four times on technical program committees (TPC) for international conferences in 2011 and 2012, judging works and assigning reviewers for works submitted to these conferences [H]e is one of only 18 reviewers worldwide to be selected to serve on the TPC for the [REDACTED], which in an international conference focused on physical layer security research." According to [REDACTED], a Professor in the Department of Electrical and Computer Engineering at the [REDACTED] the petitioner's "invited service as a reviewer for multiple technical program committees, journals and international conferences." According to [REDACTED] Engineering at the [REDACTED], the petitioner "has provided his expertise on the technical program committees for the [REDACTED]

Communication and Applications [REDACTED] The [REDACTED] Final Programme shows that the petitioner was one of approximately 200 Technical Program Committee members, and one of over 600 reviewers. The incomplete [REDACTED] shows that the petitioner was one of at least 120 Technical Program Committee members, and one of at least 500 reviewers. The petitioner has not shown that his

NON-PRECEDENT DECISION

Page 9

participation as one of many technical program committee members and reviewers in conferences is indicative of his national or international acclaim in the field of secure wireless communication as a whole.

The record includes email correspondence showing that the petitioner was invited to serve on the technical program committees for the [REDACTED]

[REDACTED] in 2012, for a workshop on [REDACTED] Security in 2011, and for the [REDACTED]. The petitioner has not provided sufficient evidence showing how many other scientists were also invited to serve on these technical program committees, such that his invitations are indicative of his national or international claim.

According to [REDACTED] the petitioner “received the honor of ‘Exemplary Reviewer’ as the top 3% of all reviewers by [REDACTED] one of the top journals on communication theory.” The record shows that the petitioner was one of over 60 exemplary reviewers in 2011. According to the January 2012 edition of the [REDACTED], exemplary reviewers are “reviewers who have written several high-quality reviews over the course of the year.” The selection is not indicative of national or international acclaim.

On appeal, the petitioner submitted a letter from [REDACTED], individuals who hold a Ph.D. degree in Electrical Engineering, “constitute 5.84% of the field,” and because he “estimate[s] that significantly below half of those professionals with Ph.D. degrees are ever asked to serve as a reviewer,” he concludes that “serving as a reviewer is in fact limited to the top 3% professionals in the field.” [REDACTED] provides that “[a]verage scientists and below rarely if ever are invited [to] serve as reviewer even if they hold a Ph.D. and would otherwise be at least theoretically qualified.” In essence, [REDACTED] asserts that anyone who holds a Ph.D. degree in electric engineering and who has served as a reviewer has achieved national and international claim. The evidence in the record does not support this assertion. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) reveals that a degree can serve as evidence indicative of exceptional ability, the lesser classification that requires a degree of expertise significantly above that ordinarily encountered in the field. It does not follow, however, that a degree is also indicative of national or international acclaim, the standard for extraordinary ability. Ultimately, the evidence does not show that if someone has a Ph.D. degree in electric engineering and has served as a reviewer, then he or she is at the top of the field in secure wireless communication.

[REDACTED] further provides that based on his experience as an editor, the petitioner’s rate of invitations to review manuscripts “is truly extraordinary” and “shows that the [petitioner’s] inherent national or international acclaim associated with reviewing is well sustained.” According to Dr. [REDACTED] the petitioner “stands out not only among the field as a whole, but even among those holding Ph.D. degrees and are therefore at least potentially of sufficient caliber to be asked to serve as a reviewer for [] international journals.” The petitioner’s review experience, however, does not match that of some of his references. For example, [REDACTED] [REDACTED] has “served in editorial roles for major international journals, including service as the Associate Editor of [REDACTED]

According to an online printout about [REDACTED] she was an Associate Editor of [REDACTED]

According to an online printout about Dr. [REDACTED] he has served as an Associate Editor for the [REDACTED] an Associate Editor for the [REDACTED] and a Guest Editor for the [REDACTED]. The evidence does not indicate that the petitioner has ever served as an editor.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Ultimately, the content of the letters submitted under this criterion does not demonstrate that the petitioner has already made contributions, in the plural, of major significance in the field of secure wireless communication. Indeed, [REDACTED] speculates that the petitioner's work "will have significant impact" in the future. Research studies that have the potential to be contributions of major significance are not sufficient to meet this criterion. Even if the petitioner had met this criterion, he has not shown his sustained national or international acclaim in the field. Although the petitioner's articles have been cited by other scientists and his findings have been accepted by other scientists, the evidence does not establish his national or international acclaim or status at the top of the field.

First, the evidence in the record does not substantiate the conclusory statements in the letters from [REDACTED]

The reference letters state that the petitioner's article [REDACTED] is among the most cited works in the field. The evidence does not establish that this article, which had been moderately cited at the time the petitioner filed the petition, constituted one of the highest cited works in the field at that time. Indeed, according to the [REDACTED] printout the petitioner filed in response to the RFE, as of March 2013, the article [REDACTED] had garnered over 100 citations.

Moreover, evidence of the petitioner's publication of articles in top publications is not sufficient to show his national or international acclaim in the field. According to [REDACTED] Professor in the Department of Electrical Engineering and Computer Science at the University of [REDACTED] "3 [of the petitioner's] journal publications are published in [REDACTED]

[REDACTED] states that [REDACTED] ranked No. 13 by [REDACTED] and No. 1 by [REDACTED] in 2010, indicating it is the field's most influential journal in the scientific community. [I]n 2010, [REDACTED] is ranked No. 8 among the journals with the highest impact factor in the telecommunication area worldwide." In response to the director's RFE, the petitioner submitted an online article entitled "[REDACTED]" that lists

NON-PRECEDENT DECISION

Page 11

the top journals by impact factor, [REDACTED] and [REDACTED]. The prestige of a publication, however, is not indicative of the importance or significance of every article published in the publication, or the acclaim of the authors of the published articles. In addition, while the petitioner's work is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to be published in a professional publication. Any research in order to be accepted for publication must offer new and useful information to the general pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has sustained national or international acclaim in the field.

In response to the director's RFE, the petitioner submitted a printout from [REDACTED] showing that the petitioner's work has been cited since 2008. The figures are misleading, however, because they include citations to articles the petitioner did not author and/or are not in the field of secure wireless communication or other area of electrical engineering. Specifically, the printout includes a 2003 article entitled [REDACTED]

[REDACTED] a 2008 article entitled [REDACTED]

[REDACTED] In addition, the information listed under "Citation Indices" relates to the total numbers of citations for several articles, which does not specifically relate to the significance of any one of the petitioner's original contributions. Also, the printout includes citations that postdate the filing of the petition, which is evidence upon which the petitioner may not rely to establish his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Third, neither [REDACTED] nor any other evidence in the record provides specific information relating to the "more than a dozen of independent works" claimed to have been inspired by the petitioner's work on using an "untrusted relay." Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Fourth, according to [REDACTED], his own admission as a fellow of [REDACTED] was based on his contributions to wireless network resource allocation. As of May 2011, according to one of the petitioner's articles published at the time, he was a student member of [REDACTED] had yet to recognize the petitioner's contributions at a level similar to those of [REDACTED] fellow.

Ultimately, the evidence of contributions is not indicative of the petitioner's national or international acclaim or status at the top of the field. At most, the petitioner has shown that his work has contributed to the general pool of knowledge in the field and has practical applications.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), while the evidence supports the director's findings that the petitioner meets this criterion, the evidence does not establish the petitioner's eligibility for the employment classification sought. See section 203(b)(1)(A)

NON-PRECEDENT DECISION

Page 12

of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, the field's response to these articles may be considered in a final merits determination. The record shows that the petitioner has authored a number of published articles. According to [REDACTED], the petitioner is "one of the most productive researchers in secure communication" and that since 2007, the petitioner "has contributed more than 30 papers in international conferences and journals, most of which he is the first author and most of which are published at the most selective conferences and journals in this field." According to [REDACTED] letter, the acceptance rate for manuscripts submitted to [REDACTED] over the last 12 months is only 48.6%, which means that the journal rejects more manuscripts that it accepts." It also means, however, that nearly half of the manuscript submissions are accepted for publication. More significant is the impact of the petitioner's publications upon dissemination in the field. The moderate citation of the petitioner's work as of the date of filing is not indicative of a publication history consistent with national or international acclaim.

Ultimately, the record does not support counsel's claim on appeal that the petitioner is an alien of extraordinary ability in the field of secure wireless communication. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. In support of the petition, the petitioner has provided evidence relating to his volunteer participation in the widespread review process, his publication record that has garnered above-average citations, and his research studies that have received praise and have practical value. This evidence is insufficient to show that the petitioner is at the very top of the field of secure wireless communication.

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 have risen to the very top of his field of endeavor.

A review of the evidence in the aggregate, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field of secure wireless communication. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his 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.