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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

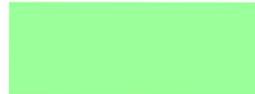


U.S. Citizenship
and Immigration
Services

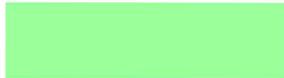


DATE: **JUL 14 2014** Office: TEXAS SERVICE CENTER

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:



INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

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

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

The petitioner’s priority date established by the petition filing date is May 24, 2013. On August 6, 2013, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on November 12, 2013. On appeal, the petitioner submits an appellate brief with additional documentary evidence in the form of an AAO non-precedent decision. For the reasons discussed below, we uphold the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. LAW

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

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

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

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

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

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

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

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

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

The court stated that the 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 we 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 we 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, we 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 not satisfied the regulatory requirement of three types of evidence. *Id.*

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

II. ANALYSIS

A. Standard of Proof

On appeal, the petitioner implies that instead of applying the preponderance of the evidence standard of proof, the director applied the higher standard of the beyond a reasonable doubt standard, citing *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) as articulating the correct preponderance of evidence standard. The *Chawathe* decision stated:

[T]he “preponderance of the evidence” standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation’s eligibility as an “American firm or corporation” under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7. Ultimately, 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 (citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r 1989)). The *Chawathe* decision further states:

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

Id. As the director concluded that the petitioner had not submitted relevant and probative evidence satisfying the regulatory requirements, the director did not violate the appropriate standard of proof. The standard of proof issue is separate and distinct from the petitioner’s assertion that the director may have gone beyond the regulatory requirements, which we will address below. We affirm the director’s ultimate conclusion that the petitioner did not submit probative evidence to establish her eligibility.

B. Evidentiary Criteria²

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the

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

recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner asserts eligibility under this criterion based on one award, the second place award at the [REDACTED] in 2005. As evidence of this award, the petitioner provided her own statement affirming her receipt of the award. The director determined that the petitioner did not meet the requirements of this criterion.

First, the petitioner's statement attesting to a 2005 award is not primary evidence of the award, which would be a copy or a photograph of the award itself. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). While the petitioner asserts that the conference organizers did not issue award certificates, she did not submit confirmation of that assertion from the event organizers. Moreover, even if she established that primary evidence does not exist or is unavailable, the regulation at 8 C.F.R. § 103.2(b)(2) requires the submission of secondary evidence, or, if secondary evidence is not available or does not exist, affidavits from persons not party to the petition with direct personal knowledge. The petitioner did not submit secondary evidence or qualifying affidavits. Rather, she submitted her statement and a letter from Dr. [REDACTED] former Dean of [REDACTED]. While Dr. [REDACTED] attests to the petitioner's award, he does not claim any direct personal knowledge of the award.

Even if we were to accept the petitioner's statement and Dr. [REDACTED]'s letter as probative evidence, which we do not, the petitioner asserts that because the award came from the [REDACTED], an organization with an international scope, the petitioner has demonstrated the international recognition of her award. The international reputation of the issuing authority alone does not satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i). The simple fact that an internationally known organization issues an award does not demonstrate that every award it issues is a nationally or internationally recognized award or prize for excellence. National and international recognition results, not from the issuing entity, but through the awareness of the accolade in the eyes of the field nationally or internationally. A petitioner can demonstrate this recognition through specific means; for example, through media coverage. The petitioner did not submit any evidence specific to the recognition of the award she states that she received. Rather, she asserts that the [REDACTED] sponsored a conference and awarded her paper second place by announcing the rankings to the conference attendees only. This statement does not support a finding of recognition beyond the [REDACTED] conference organizers and attendees.

Second, the petitioner only claims one award. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "prizes or awards" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). 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, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of 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 discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned her claims under this criterion. *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) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under 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 met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that she meets this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner’s contributions (in the plural) in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major

significance connotes that the petitioner's work has significantly impacted the field. See *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided conference papers, expert letters, media articles, the petitioner's authored textbooks, a patent, and review articles. The director determined that the petitioner did not meet the requirements of this criterion. Specifically, the director found that although the petitioner had made original contributions to her field, she did not provide evidence demonstrating that these contributions had already made a significant impact within her field.

On appeal the petitioner identifies the director's error as discounting the reference letters through a misapplication of the findings within *Matter of Caron International*, 19 I&N Dec. at 795. Within the appellate brief, the petitioner cites to the portion of this precedent decision that discusses USCIS's ability to discount or to reject evidence that is not in accord with other evidence in the record. The petitioner asserts that because the director did not explain how the letters were not in accord with the remaining evidence in the record, the director should have concluded that the letters sufficiently demonstrated that the petitioner meets this criterion. The petitioner also cites *Matter of Skirball Cultural Center*, 25 I&N Dec. 79 (AAO), which discusses the weight to be afforded experts in an unrelated nonimmigrant visa classification.

The director cited to *Matter of Caron International*, 19 I&N Dec. at 795, within his decision stating: "USCIS may, in its discretion, use such letters [of support] as advisory opinions submitted by expert witnesses. However, USCIS is ultimately responsible for making the final determination of the alien's eligibility . . . Without documentation showing that the beneficiary's work has made a major significance to the field, USCIS cannot conclude this criterion has been met." While the director did not find that evidence in the record explicitly contradicted the letters, the director did conclude that the record lacked evidence supporting the conclusions in the letters. With respect to *Matter of Skirball*, that case involved a regulation that expressly requires the submission of affidavits from experts, holding that USCIS may not reject the factual conclusions of experts if reliable, relevant and probative. The regulation at issue in *Matter of Skirball Cultural Center*, 8 C.F.R. § 214(p)6(ii) explicitly requires affidavits or letters from recognized experts attesting to the authenticity of the group. Conversely, the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not specify that affidavits alone may satisfy this criterion. Expert testimony should "assist the trier of fact to understand the evidence or to determine a fact in issue." *Matter of D-R-*, 25 I&N Dec. 445, 459 (BIA 2011). See also *Visinscaia*, 2013 WL 6571822, at *8 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). Moreover, rather than simply citing *Matter of Caron* as support for rejecting the letters, the director considered the content of the letters and concluded that they did not specify how the petitioner's contributions were already having an impact in the field.

In the initial cover letter, the petitioner identifies three key contributions as qualifying her under this criterion:

1. The petitioner's work resulted in an improvement in the field's understanding of the detection and treatment of tuberculosis;
2. She developed a new use for [REDACTED] relating to tuberculosis detection; and
3. She is a pioneer in radiopharmaceutical discoveries that have multiple applications in the medical field, especially in the area of rapid and low cost tuberculosis detection.

The record also contains evidence pertaining to the petitioner's patent, which this decision will also address.

On appeal, the petitioner states: "Every letter [submitted initially and in response to the director's RFE] confirms that a significant contribution to the field has already been made." The record does not support this assertion. First, several of the initial letters supporting the petition contain either identical or nearly identical language, including typographic errors. For example, the letter from Dr. [REDACTED] Assistant Professor at the [REDACTED] states:

I can attest to her outstanding qualifications as a leader in tuberculosis diagnostic methods research. There are not many female researchers in this particular biomedical research field and few, if any, have broken new ground in methods for diagnosing tuberculosis as [the petitioner] has done. She has proven that it is possible to detect tuberculosis in a[s] little as one hour.

The letter from Dr. [REDACTED] the Head of the Department of Nuclear Medicine at the [REDACTED] is nearly identical and states:

I can attest to her outstanding qualifications as a leader in tuberculosis diagnostic methods research. There are not many female researchers in this particular biomedical research field and few, if any, have forged new ground in methods for diagnosing tuberculosis as Dr. [REDACTED] has. She has proven that it is possible to detect tuberculosis in a[s] little as one hour.

With the exception of the December 6, 2010 letter from Dr. [REDACTED] the letters submitted with the initial petition each contain identical or similar language in the same manner as the example provided above. As a general concept, when a petitioner has provided letters from different persons, but the language and structure contained within the letters is notably similar, the trier of fact may treat those similarities as a basis for questioning the claims of the petitioner. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When letters contain such similarities, it is reasonable to infer that the petitioner who submitted the similar documents is the actual source from where the similarities derive. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). Because someone other than the authors appears to have drafted some portions of the letters, the letters possess diminished 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. at 376.

Second, 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 will receive consideration below. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. 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.

Third, 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)). Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

Ultimately, the content of the letters themselves is not persuasive. In addition to using similar language, the letters from Dr. [REDACTED] and Dr. [REDACTED] also focus on the originality and potential application of the petitioner’s work rather than explaining how it has already impacted the field. For example, Dr. [REDACTED] asserts that allowing the petitioner to work in the United States “would help her make this type of diagnostic tool available to the U.S.” His example of how the petitioner has already had a significant impact is that she presented her results at an international conference. At issue, however, is the impact this work had after the petitioner disseminated it to the field at the conference. Dr. [REDACTED] asserts that the petitioner’s work on [REDACTED] “has multiple applications” to treating drug-resistant tuberculosis without providing examples of how the field is already applying this work. While Dr. [REDACTED] asserts that the petitioner’s work with radio-complexing has resulted in otherwise impossible clinical trials, he does not identify any of these trials and the record does not contain letters from the researchers conducting these trials affirming their reliance on the petitioner’s work. Finally, in his second letter, Dr. [REDACTED] asserts that the petitioner’s rapid tuberculosis test is commercially viable, but he does not provide examples of its adoption in the medical field.

Dr. [REDACTED] Associate Professor at the [REDACTED] asserts that the petitioner has experience at esteemed organizations, and that her research record is noteworthy and significant. More specifically,

Dr. [REDACTED]'s letter indicates that the petitioner's work with [REDACTED] in humans is an original contribution to the petitioner's field; however, he did not describe how this contribution has already impacted the field in a significant manner. Dr. [REDACTED] also highlights the petitioner's work with [REDACTED] and its unique potential for tuberculosis detection, but his letter did not reflect the extent to which the field has adopted the use of [REDACTED]. Rather, Dr. [REDACTED] concludes that the petitioner "is adding knowledge and important potential insights for the understanding, detection and possible treatment of [tuberculosis]." In addition, Dr. [REDACTED] does not indicate within his letter that he possessed knowledge of the petitioner's work prior to her representatives providing him with her information. Letters from independent experts who were not previously aware of the petitioner and her work prior to being requested to provide a reference letter have limited probative value in demonstrating the petitioner's impact in the field.

In response to the director's RFE, the petitioner provided an undated letter from Dr. [REDACTED] Assistant Professor at [REDACTED]. Dr. [REDACTED] asserts that the petitioner's radio-complexing approach to treat tuberculosis is being used globally. However the record lacks probative evidence to demonstrate the extent of the field's use of the petitioner's findings. For example, Dr. [REDACTED] does not provide examples of institutions using the petitioner's findings and the record lacks letters from independent researchers building on the petitioner's work. 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. With respect to the petitioner's rapid tuberculosis test, Dr. [REDACTED] states that it "can be used in developed, developing and underdeveloped countries." He does not, however, suggest that it is already being used globally or even nationally.

Dr. [REDACTED] also discusses the petitioner's work with rapid tuberculosis testing kits but did not provide evidence demonstrating the impact of this work in the field. Dr. [REDACTED]'s use of the language in the extraordinary ability immigrant regulation to describe the petitioner 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.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner also relies on a May 8, 2013 email from Dr. [REDACTED] at the [REDACTED] [REDACTED] inviting the petitioner to collaborate with the center on developing a diagnostic test. This email predates the filing of the petition by only a few days and the results of this collaboration, if it occurred, are not part of the record. An expression of interest in collaborating is not evidence that the petitioner has already impacted her field at a level consistent with a contribution of major significance.

Finally, Dr. [REDACTED] asserts that the petitioner was part of a team that invented a substance that can be inhaled, administered orally, or absorbed through the skin. Dr. [REDACTED] did not indicate if this newly invented substance was applicable to tuberculosis or to disease treatment in general. While Dr. [REDACTED] asserts that the team has gained notoriety for this discovery, the letter provides no examples of

recognition in the field, such as use at specific locations or discussion in the professional, trade or general media.

The final expert letter submitted in response to the director's RFE is from [REDACTED] Associate Professor at the [REDACTED]. Dr. [REDACTED] notes that he has cited to the petitioner's findings within his own book chapter, but does not explain how the petitioner has impacted his work. Dr. [REDACTED] also identifies the petitioner's original contribution as developing a rapid and cost effective diagnostic method to identify tuberculosis "that will help further research on infectious diseases." Dr. [REDACTED] discusses the importance of the petitioner's methodology, but stops short of explaining how this methodology has already impacted the petitioner's field as a whole. Rather, he asserts that her methodology "will help further research on infectious diseases." Potential future impacts in the field are not sufficient under this criterion. See 8 C.F.R. § 103.2(b)(1), (12).

As stated above, the petitioner also claims eligibility under this criterion based on an Indian patent, A [REDACTED]

The petitioner was one of the patent inventors and claims this patent resulted in a frostbite cream named [REDACTED] that was "accepted for use by the Indian military." The record does not contain documentary evidence, such as a licensing agreement, or letters from the military to support the claim that the Indian military purchased the rights to use the cream. The record also contains minimal evidence showing that the patent for which the petitioner is a listed inventor resulted in the frostbite cream [REDACTED]. Dr. [REDACTED] Head of the Department of Zoology at the [REDACTED] asserts vaguely that the petitioner "made a significant contribution in creating a patented method for radiocomplexation of salbutamol, which was used to invent a frostbite cream." Dr. [REDACTED] does not explain how he has first-hand knowledge of how the developers of [REDACTED] utilized the petitioner's patent. Moreover, his letter contained similar language to that appearing in other reference letters, reducing the probative value of his letter. The petitioner's unsupported assertions relating to the [REDACTED] cream being directly associated with her work do not constitute evidence. *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)). Dr. [REDACTED] mentions the petitioner's patent, but provides no further indication of the significance of the patent.

Regarding patents, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner's Indian patent is through the Indian government and the evidence related to this patent does not indicate that it is licensed by or assigned to any company or other entity. The evidence is also vague and uncorroborated as to how the petitioner's patent resulted in [REDACTED] and its use by the Indian military.

Within her appellate brief, the petitioner references unpublished AAO decisions to rebut the director's conclusion that expert letters cannot form the cornerstone of an extraordinary ability claim. The petitioner provides a copy of one such decision in support of the appeal. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the

administration of the Act, unpublished decisions are not similarly binding. Furthermore, the AAO decision provided on appeal relates to a lesser immigrant classification than the one the petitioner seeks in this matter. In fact, the director approved the petitioner's separate petition filed in the classification at issue in the non-precedent decision the petitioner provides on appeal.

An alien must have demonstrably impacted her field in order to meet this regulatory criterion. See *Visinscaia*, 2013 WL 6571822, at * 8 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). The reference letters submitted by the petitioner discuss her research skills and abilities, but they do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance that have already come to fruition.

Beyond the letters and patent, the petitioner has authored articles in her field. Published articles and presentations, which fall under 8 C.F.R. § 204.5(h)(3)(vi), are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115. 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. As evidence of the impact of her published work, the petitioner submitted two online articles from unidentified websites, two book chapters, an unpublished dissertation, three articles and what appears to be a patent application that cite the petitioner's published work. The petitioner also submits informal online reviews of her books from individuals whose identity and credentials are not apparent from the reviews. The petitioner did not demonstrate that this limited citation history and the informal anonymous reviews are indicative of an impact consistent with a contribution of major significance in the field.

For all of the reasons discussed above, the petitioner has not submitted evidence that meets the plain language requirements of 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 met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that she meets this criterion.

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

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. The petitioner also has the responsibility to demonstrate that she actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished

reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, the petitioner asserts eligibility based on her role with the [REDACTED] in the Indian [REDACTED]. The director determined that the petitioner did not meet the requirements of this criterion.

As evidence of her critical role for [REDACTED] the petitioner provides the same evidence noted above relating to the frostbite cream [REDACTED]. However, as discussed, the petitioner did not provide probative evidence demonstrating the nexus between her patent and the cream. She also provides media coverage relating to developing technologies within the Indian government from [REDACTED]. This evidence does not discuss the petitioner nor any patent relating to the petitioner, and does not provide information to demonstrate that the petitioner's patent led to the creation of the [REDACTED] cream.

Finally, a leading or critical role is ultimately experience. The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience "shall" consist of letters from the employer. The petitioner did not submit any letters from [REDACTED]. Instead, the petitioner relies on the letter from Dr. [REDACTED] Head of the Department of [REDACTED]. Dr. [REDACTED]'s letter contains multiple passages with language pertaining to a separate issue that is similar to that in other expert letters on record. For example, Dr. [REDACTED] letter states:

Her paper entitled "Comparative study of [REDACTED] and native [REDACTED] and roll of [REDACTED] in resistant mycobacterial imaging" was so well received by the international scientific community that it featured in the International Symposium and Conference Proceedings of the [REDACTED]. This recognition clearly testifies significant contribution of Dr. [REDACTED] to science . . .

The letter from Dr. [REDACTED] states:

Further, her work, on "Comparative study of [REDACTED] and roll of [REDACTED] in resistant mycobacterial imaging" was so well received by the international scientific community that it was featured in the International Symposium and Conference Proceedings of the [REDACTED]. These recognitions clearly signal that Dr. [REDACTED] work has made a significant impact on the international community . . .

³ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on July 1, 2014, a copy of which is incorporated into the record of proceeding.

The similarities diminish the probative value of these letters in the present proceedings. *Cf. Surinder Singh*, 438 F.3d at 148; *Mei Chai Ye*, 489 F.3d at 519. 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. at 376. Regardless, Dr. [REDACTED] does not discuss the petitioner's role for [REDACTED] rather he asserts only that the petitioner contributed towards a patented method necessary for the development of frostbite cream, which the Indian military is using.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of that the alien has performed in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, we can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya*, Civ. Act. No. 06-2158 (RCL) at *12; *Snapnames.com Inc.*, 2006 WL 3491005, at *10. As the petitioner only asserts eligibility based on one organization, she cannot meet the plain language requirements of this criterion.

As the petitioner has not provided probative evidence relating to her claim under this criterion, she has not submitted evidence that meets the plain language requirements of this criterion.

C. Summary

The petitioner has not satisfied 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 have risen to the very top of the field of endeavor.

The petitioner's appellate brief asserts the director did not ascribe sufficient evidentiary weight to the evidence of national acclaim. The petitioner explains:

[Because the *Kazarian* court] closely followed *Buletini* (*Buletini v. INS*, 860 F. Supp. 1222, 1231, 1234 (E.D. Mich. 1994)) in its analysis of the regulatory criteria, it is logical to conclude that *Kazarian* also meant for the final merits determination to follow *Buletini*'s approach. According to both *Kazarian* and *Buletini*, the first step is to analyze the evidence and determine whether it meets at least three regulatory criteria of extraordinary ability. Once the three criteria are met, the next analytical step must be conducted, and *Kazarian* does not specify what that is.

However, the petitioner neither satisfied at least three criteria before the director, nor did she submit evidence satisfying three criteria on appeal. Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While we conclude 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, we need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has not satisfied 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.

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.

⁴ 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).