

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JUL 16 2014** Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

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

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

On appeal, the petitioner asserts that the director erred in determining that he met only two of the regulatory criteria. The petitioner asserts that he also meets the criterion for original contributions of major significance in the field and the criterion for lesser national or internationally recognized prizes. In addition, the petitioner asserts that he qualifies as an alien of extraordinary ability under a final merits analysis.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, 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 failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

¹ Specifically, the court stated that we 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).

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

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

The director concluded that the evidence of record was insufficient to meet this criterion. More specifically, the director concluded that, whether academic or otherwise, the pool of competitors for the awards was limited, implying that the more experienced members of the field do not compete for these awards. The petitioner states in his initial statement, response to the Request for Evidence (RFE), and the appeal brief that he has won the following:

- 1) [REDACTED] scholarship in 2005;
- 2) A grant from the [REDACTED]
- 3) A [REDACTED]
- 4) A position as a visiting scholar at the philosophy department at the [REDACTED]
- 5) Participation in the [REDACTED] faculty development initiative, 2009, 2010;
- 6) A travel grant from the [REDACTED] 2009;
- 7) A position as a visiting scholar at the classics department of [REDACTED]; and
- 8) A grant from the [REDACTED] Washington, 2011.

On appeal, the petitioner asserts that the director erred in assessing the above list as student level scholarships. The petitioner also asserts that the director improperly dismissed the awards because the field had been limited.

First, the initial cover letter does not identify which attachments relate to this criterion and it is not apparent from the attachments themselves, which do not reference specific criteria. While the petitioner documented his visiting scholar position with the [REDACTED] as part of attachment 1, the remaining documents in that attachment do not relate to this criterion or the above entities. In addition, attachment 6 contains letters from the [REDACTED] relating to his application for academic fellowships. The petitioner does not claim that these are qualifying awards and the remaining documents in this attachment do not relate to this criterion or the above entities.

Upon review of the entire record, the petitioner did not establish that he is the recipient of the remaining scholarships and grants because the record lacks copies of the certificates or other notification. The record includes some foreign language documents for which the petitioner did not submit certified translations pursuant to 8 C.F.R. § 103.2(b)(3), or any translation, but these untranslated documents have no evidentiary value. The director issued a Request for Evidence (RFE) in which he requested "a copy of each prize or award certificate." The response to the director's RFE references "attachment X," but the petitioner only submitted attachments I-IX. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless, the petitioner also did not establish that the claimed

scholarships, grants and employment are nationally or internationally recognized awards or prizes for excellence.

Regarding the scholarships, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, postdoctoral fellowships, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Moreover, the petitioner did not submit any documentary evidence to demonstrate that the scholarships are recognized nationally or internationally for excellence in the field of endeavor. Finally, while they may be prestigious, fellowships, scholarships, and other sources of competitive financial support are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. Receiving funding for one's academic training does not constitute receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to students seeking to further their research, training, and experience. Finally, financial aid awards in the form of scholarships are reserved for students in need of financial assistance to pay for tuition and not based on excellence in the field. Similarly, travel awards designed to financially assist young researchers attend conferences in their field are not nationally or internationally recognized awards or prizes for excellence.

In addition, regarding the petitioner's research grants, research grants serve to fund a researcher's work. The past achievements of the researcher are a factor in grant proposals; the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize excellence.

Regarding the petitioner's time spent at the [REDACTED] as a visiting scholar, while there are letters in the record that substantiate the petitioner's claim of a period of study at both institutions, there is nothing in the record to suggest that a visiting scholar status at each institution is a prize or an award for excellence. Rather it is employment. The regulation at 8 C.F.R. § 204.5(h)(3)(viii) allows a petitioner to submit evidence of a leading or critical role for organizations or establishments with a distinguished reputation. Thus, the regulations account for employment as a separate criterion from awards or prizes. The petitioner does not claim to meet the leading or critical role criterion.

Accordingly, the petitioner did not establish his eligibility under 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. 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner initially submitted evidence under this criterion along with his Form I-140 petition. The director determined in his decision that the petitioner did not meet the requirements of the regulation. The petitioner does not raise this issue on appeal. Therefore, the petitioner abandoned this claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v.*

Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal).

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The director determined that the petitioner established his eligibility under 8 C.F.R. § 204.5(h)(3)(iv) and the record supports the director’s determination.

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).

As an initial matter, the petitioner asserts that the director erred in dismissing his claims based on guidelines outlined in the 2006 Adjudicator’s Field Manual (AFM), which the petitioner quoted in response to the director’s RFE. The petitioner acknowledges that the language does not appear in the current version of the AFM, revised in 2010, but asserts that the analysis remains the same. Regardless of the wording in the AFM, the petitioner did not submit sufficient evidence to establish that his contributions are both original and of major significance.

On appeal, the petitioner asserts that support letters from experts demonstrate that his work is original and has major significance in the field. In addition, the petitioner asserts that requests to serve as a peer reviewer for scholarly journals, the inclusion of his articles in books, extensive downloading of his papers from an online network, and invitations to present his work in symposia indicate that his work is of major significance in the field.

The petitioner submitted signed support letters from the following individuals: (1) [REDACTED] Head of the Department of Classics, [REDACTED] (2) [REDACTED] Professor of Politics, [REDACTED] and (3) [REDACTED] Professor Emeritus of Philosophy, [REDACTED]. The petitioner also submitted unsigned letters purportedly from (1) [REDACTED] Professor of History and Politics, [REDACTED] (2) [REDACTED] Professor of Philosophy, [REDACTED] and (3) [REDACTED], Professor, [REDACTED]. As the purported authors did not sign the unsigned letters, those letters have no probative value.

The petitioner highlights excerpts from several of the above letters as evidence of the originality of his work. However, to meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(v), the petitioner must demonstrate that in addition to being original, his contributions are 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 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

³ The petitioner, on appeal, references statements from [REDACTED] Director of the [REDACTED]. However, the record does not contain a letter from Dr [REDACTED].

In discussing the petitioner's work, Dr. [REDACTED] praises the petitioner's unique perspective on Greek philosophy based on his familiarity with Islamic thinkers and writes the following:

[The petitioner's] plan to undertake a comparison between Greek and Old Iranian syntactic systems and lexicon is superb. Too often assertions concerning syntax are made from typological models, and lack the meticulous analysis that has marked the study of phonological and morphological change Although he is not formally a linguist, his philosophically-inspired approach actually gets one closer to the spirit of earlier syntacticians in both Greek [] and Indo-Iranian domains [] – not to mention a resemblance to Chomskyan-style cognitive studies – and may well provide a new impetus to look at certain global structures in a fresh way.

While Dr. [REDACTED] is complimentary of the petitioner's linguistic abilities and comments that the petitioner's future planned work may enable scholars to look at certain global structures in a fresh way, Dr. [REDACTED] observations relate to the possible future impact of the petitioner's work. Moreover, Dr. [REDACTED] statements do not indicate that the petitioner's work has already had an impact on the field as a whole. *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).

Dr. [REDACTED] praises the petitioner as a distinguished scholar whose achievements are rare based on the resources available to him in Iran and concludes that the petitioner "deserves to be received in the [United States] as a promising new member of the immigration country." Dr. [REDACTED] concludes:

[The petitioner] is a highly qualified and serious scholar of classical Greek philosophy, and his combination of this expertise with his knowledge of an ability to research the reception of Greek philosophy in classical Iran gives him a highly specialized and valuable expertise which only a very few people share - he may well be unique in the high level with which he is able to deploy this combination of skills and knowledge. It would be a great contribution to the study of the history of Greek philosophy and his global reception to have present in the United States and able to participate fully in scholarly circles here.

These statements do not explain how the petitioner has already impacted his field. *Cf. Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010) (noting that 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). *See also 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990) (noting that USCIS need not accept primarily conclusory assertions). Thus, the signed letters do not support the petitioner's claim to meet this criterion, not because they are letters, but because the content of the letters does not explain how the petitioner has already impacted the field. *See 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).

Regarding the petitioner's assertion that invitations to be a reviewer for journals are indicative of his contributions of major significance in the field, the regulations contain a separate criterion regarding participation as a judge of the work of others. 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the regulation views contributions as a separate evidentiary requirement from contributions of major significance.

The petitioner asserts that the inclusion of his articles in three books helps establish his eligibility under this criterion. However, the petitioner has not submitted supplemental evidence demonstrating the importance of the three texts. The inclusion of the petitioner's articles in books with little impact on the field would not meet the plain language requirements for this criterion.

The petitioner also asserts that citations are rare in his field. Instead, the petitioner asserts that the extensive downloading of his papers from an online network is the modern-day equivalent of citations and that the frequency of downloads establish the impact that his writing has had on the field. Citations are only one type of evidence that can, on a case by case basis, demonstrate a scholarly researcher's impact in the field. Nevertheless, if citations are unavailable, the petitioner must submit a different type of evidence to show his impact. As discussed above, the signed letters the petitioner submitted do not attest to such an impact. With respect to the downloads, the evidence that anonymous individuals with undocumented credentials have downloaded his articles without subsequently relying on and citing those articles does not establish the petitioner's impact on the field.

Finally, the petitioner asserts that he meets this criterion because he has been invited to participate in numerous conferences and symposia. However, participation in research and professional conferences is inherent to the occupation of post-secondary teachers. See the Department of Labor's Occupational Outlook Handbook, available online at <http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-2>. The record does not include evidence that indicates that the petitioner's presentations at or participation in professional conferences impacted the field as a whole. See *Visinscaia*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6.

Accordingly, the petitioner did not establish his eligibility under 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).

The director concluded that the evidence of record was sufficient to establish the petitioner's eligibility pursuant to this criterion and we agree with the director's determination in this regard.

B. Summary

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

III. CONCLUSION

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

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