

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **JUL 18 2014** Office: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not met the requisite criteria 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 director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, the petitioner submits a November 1, 2013 letter, and citation evidence that had previously been submitted in response to the director's request for evidence. In the letter, the petitioner asserts that he meets the additional category of evidence at 8 C.F.R. § 204.5(h)(3)(v).

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 we 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 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 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 On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

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 petitioner submitted evidence demonstrating that he peer-reviewed manuscripts for [REDACTED]

[REDACTED] Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is affirmed.

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

The petitioner submitted letters of support, his publications and presentations, and citation evidence for his published work. The director acknowledged the petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the petitioner's work equated to original contributions of major significance in the field. The director therefore concluded that the petitioner did not establish eligibility for this regulatory criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In the November 1, 2013 letter submitted on appeal, the petitioner states:

The original submission as well as the response to the request for evidence confirm a substantial record of publication and presentation in prominent forums as well as in book chapters as well as numerous citations of these. Furthermore, he has been selected to serve as a reviewer for numerous prominent journals, further demonstrating his outstanding reputation within the field of surgery. This combined with his significant record of clinical expertise in the field of surgery as attested to by his peers through testimonial letters we respectfully assert shows that he has an outstanding reputation as a physician scientist and that he should be deemed to have satisfied the original contributions category, the third necessary category.

With regard to the petitioner's "record of publication and presentation in prominent forums as well as in book chapters," in *Kazarian v. USCIS*, 580 F.3d at 1036, the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. 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. Thus, there is no presumption that every published article or

conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

The petitioner submitted citation evidence from Google Scholar reflecting an aggregate of ten cites to his body of research work since 2008. The submitted documentation reflects that none of the petitioner's articles was cited to more than seven times. Specifically:

- 1.
- 2.
- 3.
- 4.

The submission of documentation reflecting that the petitioner's work has been cited by others in their published work is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the number of independent cites per article for his published work is indicative of original scientific contributions of major significance in the field.

In regard to the petitioner's service as a peer reviewer for various medical journals, the regulations contain a separate criterion for judging the work of others, 8 C.F.R. § 204.5(h)(3)(iv), a criterion that the petitioner has already met. Evidence relating to or even meeting the judging the work of others criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for judging the work of others and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Furthermore, articles are selected for publication in scientific journals through the peer review process. A journal's editorial staff will enlist the assistance of professionals in the field who agree to review submitted papers. It is not unusual for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. The petitioner fails to explain how his task of reviewing articles for various medical journals rises to the level of original contributions of major significance in the field.

In addition, the petitioner points to the "testimonial letters" from his peers as evidence that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Dr. [REDACTED], Associate Staff Vascular Surgeon at the [REDACTED] stated:

Presently, [the petitioner] is a vascular surgeon at [REDACTED]. In this post, he treats patients suffering from the most advanced vascular conditions, including abdominal aortic aneurysms, which is a frequently fatal condition requiring immediate treatment. The surgical treatment of vascular injuries is highly complex, and [the petitioner] is able to share his expertise in this area with patients who travel from across the tri-state region for these operations.

His presentation on the complex topic of [REDACTED] – Early and Mid-term outcomes, was well taken in the [REDACTED] in June 2011 in [REDACTED] USA. In this work, [the petitioner] showed the advantages of hybrid endovascular repair for a highly complex, and challenging pathology.

In addition to his impressive employment positions, [the petitioner] is a well published. One of his research articles titled [REDACTED] journal in 2011 and was well acknowledged by peers. [The petitioner] concluded in this article that Low Body Mass Index is associated with increased mortality in critically ill patients and a BMI of less than 18.5 kg/m² is an independent factor affecting outcome in surgical critical care patients.

Dr. [REDACTED] comments on the petitioner's presentation at the Annual Meeting of the [REDACTED] in 2011. With regard to the petitioner's conference presentation, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, employers, and government agencies promote and sponsor these meetings and conferences. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that the petitioner's presented work has been frequently cited by independent researchers, has substantially impacted the surgical field, or has otherwise risen to the level of contributions of major significance in the field.

In addition, Dr. [REDACTED] points to the article coauthored by the petitioner and six others in [REDACTED] on October 1, 2011 and states that the article "was well acknowledged by peers." The petitioner submitted citation evidence from Google Scholar showing that the preceding article garnered only seven citations. Again, the petitioner has not established that such a level of citation over a period of two years is indicative of scientific contributions of major significance in the field. Although the petitioner's research findings have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific or medical community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every surgery researcher who performs original research that adds to the general pool of knowledge in the field inherently has inherently made a contribution of "major significance" to the field as a whole.

Dr. [REDACTED] Chief Scientific Officer of the [REDACTED] and Dean of the [REDACTED] [REDACTED] stated:

Recently, [the petitioner's] research work titled [REDACTED] [REDACTED] was published in the [REDACTED] [REDACTED] with an impact factor of 3.285. In this study, [the petitioner] examined the effect of obesity on morbidity and mortality of about 1800 patients admitted to the surgical intensive care unit, where he found that obesity does not affect the mortality of patients admitted to the surgical intensive care unit and that it cannot be used as an independent predictive mortality outcome variable in these patients. This study provides some important information on a highly debatable topic.

Dr. [REDACTED] states that the petitioner's article entitled [REDACTED] [REDACTED] "provides some important information on a highly debatable topic." However, according to the submitted citation evidence from Google Scholar, the aforementioned article has not garnered any independent citations. In addition, Dr. [REDACTED] fails to provide specific examples of how the petitioner's findings affected surgical procedures at various hospitals or were otherwise of major significance to the field.

Dr. [REDACTED] [REDACTED] and Assistant Professor, Department of Surgery, [REDACTED] stated:

[The petitioner] has distinguished himself as a surgeon by demonstrating his superior ability to understand and perform a variety of advanced, cutting edge surgical procedures. He is extremely well read and has an almost unsurpassed knowledge and understanding of the fundamentals of medicine. He is praised for staying ahead of curve on new, cutting edge medications and therapies.

[The petitioner] has special expertise in surgical oncology and laparoscopic surgery. As an advanced laparoscopic surgeon, he conducts complicated laparoscopic procedures such as laparoscopic colon surgery, laparoscopic colectomy, laparoscopic pancreatic surgery and laparoscopic hernia surgery.

In particular, [the petitioner's] exceptional skills in laparoscopic colon surgery provide a significant benefit to the U.S. The American College of Surgeons estimates that there are 106,000 new cases of colon cancer and 41,000 new cases of rectal cancer each year incurring estimated costs of \$8.3 billion a year. Surgery is the main treatment for colon cancer, and the traditional operation has been the open, partial colectomy. This is a highly invasive procedure with a long recovery time. [The petitioner] is one of a minority of surgeons who is capable of performing laparoscopic colon resections. These surgeries are minimally invasive with a much shorter recovery time. With the laparoscopic procedure, the patient saves time, costs, and endures less pain. Accordingly, there is an increasing need for well-trained laparoscopic surgeons in the U.S.

Dr. [REDACTED] comments on the petitioner's surgical abilities, medical knowledge, expertise in surgical oncology and laparoscopic surgery, and exceptional skills in performing laparoscopic colon surgery. In addition, Dr. [REDACTED] asserts that the petitioner "is one of a minority of surgeons who is capable of performing laparoscopic colon resections" and that "there is an increasing need for well-trained laparoscopic surgeons in the U.S." Assuming the petitioner's surgical skills and knowledge are unique, the employment classification sought was not designed for alleviating skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). Dr. [REDACTED] fails to provide specific examples indicating that the petitioner's work has influenced the surgical field or has otherwise been of major significance to the field.

[REDACTED] I [REDACTED] and Associate Professor, Department of Pediatrics, [REDACTED], stated:

[I]n the work [REDACTED] presented at [REDACTED] [the petitioner] showed that the failure of conventional abdominal aortic aneurysm (AAA) repair may occur as a result of late para-anastomotic aneurysm due to the breakdown of the anastomotic suture line. Additional causes could include aortic wall fragility or erosion by infection. In the work, [the petitioner] showed the advantages of endovascular repair as an alternative and corrective measure. He noted that endovascular repair offers a minimally-invasive approach, with decreased morbidity and mortality in these cases.

Dr. [REDACTED] points to the petitioner's presentation entitled [REDACTED] but the petitioner has failed to establish, for example, the impact or influence of his presentation beyond those in attendance so as to establish that his work was majorly significant to the field. Dr. [REDACTED] does not provide specific examples of how the petitioner's work has influenced the field as a whole or otherwise constitutes an original contribution of major significance in the surgical field.

Dr. [REDACTED] Professor of [REDACTED] stated:

Recently, [the petitioner] published [REDACTED] a high impact factor publication in medicine.

In this work, [the petitioner] answered an important question: if the administration of heparin for deep vein thrombosis prophylaxis to neurosurgical patients is safe and whether the administration of heparin is an independent risk factor for bleeding in this patient population. Five hundred twenty-two neurosurgical patients were included in the study. . . . It was concluded that administration of heparin dosed according to the risk for thromboembolism does not appear to contribute to postoperative hemorrhage in neurosurgical patients.

This study supports the concept that the administration of subcutaneous heparin is safe in postoperative neurosurgical population, and provides very valuable evidence on the topic in this field.

* * *

Further, [the petitioner] has recently written a chapter on "[redacted]" for the online encyclopedia of the [redacted]

Dr. [redacted] states that the petitioner's article entitled "[redacted]" "supports the concept that the administration of subcutaneous heparin is safe in postoperative neurosurgical population, and provides very valuable evidence on the topic in this field." According to the submitted citation evidence from Google Scholar, the aforementioned article has been cited to only once since 2012. There is no documentary evidence showing that the preceding article in the [redacted] or that the petitioner's chapter on "Abdominal Aortic Aneurysm" for the [redacted] have been frequently cited by independent researchers, have led to widespread changes in surgical protocols with corresponding improvement in patient outcomes, or have otherwise been indicative of contributions of major significance in the field.

Dr. [redacted], Chief of the [redacted] Surgery, [redacted] stated:

[The petitioner] is working in the Vascular Surgery department, and his day to day practice involves performing complex endovascular procedures (minimally invasive vascular surgery). This requires sound theoretical knowledge, and a very high level of technical skills, and I have no doubt in saying that [the petitioner] is an expert in the field.

[The petitioner] has performed many complex cases, which are worth mentioning, I remember one of the cases, in which his outstanding care is particularly evident. This patient is a retired 71 year old grandfather, who presented with abdominal pain. He had significant past medical history of hypertension, coronary artery disease, chronic obstructive pulmonary disease and also history of repair of abdominal aortic aneurysm in 2004. His workup revealed recurrence of aortoiliac aneurysm, which is a life threatening, abnormal dilatation of the bifurcation of the largest blood vessel in the body. Normally, that condition would require a very big operation to repair the aneurysm and place a graft to save the patient's life, but with the expertise of [the petitioner], and a team effort of vascular surgery, interventional radiology, and surgical intensive care unit, it became possible to place a stent in the enlarged blood vessel, and perform an endovascular repair of the aneurysm. This was a minimally invasive procedure performed through only two small incisions in the groin, in contrast to an open repair, which would have involved a large incision in the abdomen. Patient did remarkably well, and was discharged home the next day.

Dr. [redacted] comments on the petitioner's ability to perform complex endovascular procedures, his theoretical knowledge and technical skills, and his success in utilizing a minimally invasive

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endovascular procedure to repair a patient's aortoiliac aneurysm, but the evidence submitted does not demonstrate that the petitioner's work has affected the surgical field in a major way or that his work was otherwise indicative of original contributions of major significance in the field.

Dr. [REDACTED] Professor of Clinical Surgery at [REDACTED] stated:

At the [REDACTED] [the petitioner] performs numerous critical functions such as teaching medical students, residents and applying his expert endovascular skills to the extremely complex vascular patients, which few in this country can apply.

I would like to mention a few instances, where [the petitioner] saved a patient's limb and life by his excellent clinical and operative skills. A 50 year old father of three girls, presented to emergency department with pain and swelling of the base of the left neck, above his collar bone. [The petitioner] diagnosed him with ruptured aneurysm/pseudo-aneurysm arising from a branch of the left thyrocervical trunk, with a CT scan. This was a life threatening condition and the patient was taken emergently to the operating room, where [the petitioner] first inserted coils to stop the leaking blood, and then placed a stent graft to maintain the blood flow to the arm. Patient was discharged home 2 days later.

Another patient was an 80 year old grandmother, who came to ER with her daughter and granddaughters with shoulder pain. She had history of cardiac arrhythmia, and her workup revealed aberrant right subclavian artery aneurysm (abnormal dilatation of the artery supplying the right arm), which is very uncommon, also limb and life threatening if ruptures. With a combination of open and minimally invasive approach, [the petitioner] successfully placed an Amplatzer plug in the area while maintaining the blood flow to the arm and the brain. The patient did very well and was discharged home the next day.

Dr. [REDACTED] points to the petitioner's instruction of medical students and residents, and successful treatment of two patients at [REDACTED] but there is no documentary evidence showing that the petitioner's specific work rises to the level of original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to the staff and patients at his hospital. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *4,*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] a hospitalist at [REDACTED], stated:

I am very impressed by [the petitioner's] research article titled "[REDACTED]" published in [REDACTED]. In this study, he wrote about the patients in the intensive care unit (ICU), who are at an increased risk of Deep vein thrombosis (DVT) and pulmonary embolism (PE) compared with the general population. [The petitioner] studied the safety and efficacy of early heparin administration for DVT prophylaxis in these critically ill patients with lower GI bleeding.

* * *

This is one of the very few research articles, that has changed my practice. Now [the petitioner's] recommendation certainly influences my decision making while taking care of such patients.

Dr. [REDACTED] asserts that the petitioner's article in [REDACTED] has changed his practice and influenced his decision making, but the submitted citation evidence from Google Scholar indicates that others in the field have cited to the article only once since 2012. There is no documentary evidence showing that the petitioner's findings been utilized by other surgeons or physicians at a level indicative of contributions of major significance in the field.

Dr. [REDACTED] a pulmonary critical care attending physician, [REDACTED], stated:

[The petitioner's] article titled [REDACTED] was published in the [REDACTED] with an impact factor of 3.285. This is an outcome study of 1792 patients, in which he examined the effect of obesity on morbidity and mortality in patients admitted to the Surgical Intensive Care Unit.

The incidence of obesity is rising, and an increasing number of obese patients are admitted to surgical intensive care units. [The petitioner] found that mortality rates were not statistically significant among different obese groups when compared with the group with normal Body Mass Index and he concluded that obesity does not affect the mortality of surgical patients who are admitted to surgical intensive care units.

[The petitioner's] research work showing that obesity cannot be used as an independent predictive outcome variable in patients admitted to the SICU is outstanding and changes the previous belief that obese patients have higher mortality. This definitely changed my practice and also of few of my colleagues.

Dr. [REDACTED] comments on the petitioner's article in [REDACTED] but the submitted citation evidence from Google Scholar indicates that the petitioner's article has not garnered any independent citations. Although Dr. Singh asserts that the petitioner's work changed his practice and that of his colleagues, he does identify the other colleagues whose work that the petitioner has influenced. There is no documentation showing that the petitioner's specific findings have been implemented at a number of surgical intensive care units, that his findings are frequently cited by independent researchers, or that his work otherwise equates to original contributions of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the

benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a physician or surgeon who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely implemented throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that he meets this regulatory criterion. *See Visinscaia*, 2013 WL 6571822, at *6.

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

The petitioner has documented his authorship of scholarly articles in professional publications and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is affirmed.

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

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *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) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

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

III. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a

“level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although 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.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.

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.

³ The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). 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).