

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE:

JUL 23 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 cursive script that reads "Ron Rosenberg".

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. We will dismiss the appeal.

The petitioner, a medical physics resident and researcher, 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.

On appeal, the petitioner submits a brief. In the brief, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi).

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

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

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. 2011) (plaintiff’s claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

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.

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 his eligibility. In the appellate brief, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory 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 petitioner submitted evidence demonstrating that he peer-reviewed manuscripts for *Journal of Physics and Chemistry of Solids* and *Medical Physics*. 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 this criterion 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 appeal brief, the petitioner points out that "almost half of all the letters submitted" were from individuals who state that they did not work with or collaborate with the petitioner. Accordingly, the director's statement that "[a]ll the letters were written by individuals who have worked with the petitioner" is withdrawn. The petitioner further states that the director "failed to look at the totality of the evidence and, instead, evaluated each piece of evidence in isolation." For example, the petitioner contends that the director focused on "the total number of citations" rather than evaluating "the actual citation history of individual papers."

The petitioner submitted citation evidence from [REDACTED] reflecting an aggregate of 87 cites to his body of research work since 2003. Fifteen of the submitted citations are self-cites by the petitioner or his coauthors (such as Professor [REDACTED]). Self-citation is a normal, expected

practice. Self-citation cannot, however, demonstrate the response of independent researchers. The submitted documentation reflects that none of the petitioner's individual articles was independently cited to more than 16 times. Specifically:



With regard to items 1 – 10, 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 addition to the [redacted] citation evidence, the petitioner submitted information showing the impact factor of the journals that published his work. Although a journal's impact factor can provide an approximation of the prestige of the journal, the impact factor does not demonstrate the major significance of every article published in that journal. The petitioner must establish that the findings in his article have affected the medical physics field at a level indicative of original contributions of major significance in the field. The petitioner points to documentation showing that his articles entitled [redacted]

[redacted] were cited to at a higher than average rate relative to other articles published in those same journals. An above average citation rate, however, does not necessarily equate to contributions of “major significance” in the field. The petitioner has not

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established that the above average citation rates and number of independent cites to the preceding two articles (sixteen and fifteen, respectively) are indicative of contributions of major significance in his field.

The petitioner's appeal brief points to the letters of support as further evidence that he meets this criterion.

Dr. [REDACTED] Professor, Department of Radiation Oncology, [REDACTED], stated:

I have known [the petitioner] since he joined the [REDACTED] in the summer of 2010 as a postdoctoral research fellow.

* * *

[REDACTED]

Dr. [REDACTED] comments on the petitioner's postdoctoral research at [REDACTED] and his "unique findings" with regard to [REDACTED] research, but there is no documentary evidence showing that the petitioner's work on [REDACTED] that was published in [REDACTED] has been frequently cited by independent researchers or was otherwise of major significance to the field. In addition, Dr. [REDACTED] does not provide specific examples of how the petitioner's original work has been applied by others outside of the [REDACTED] or otherwise constitutes contributions of major significance in the medical physics field.

Dr. [REDACTED] Assistant Professor, Department of Radiation Oncology, [REDACTED], stated:

In 2003 [the petitioner] joined the [REDACTED] in [REDACTED] and defended his Ph.D. dissertation titled [REDACTED] in September 2008. His work during this period focused on the search of a fast, robust, non-organic scintillation material to be used for the detector window of a deuterium-tritium neutron generator. His contribution to

this project includes (1) establishment of qualitative and quantitative means to identify the free-carrier transportation and defect levels in single-crystals and thin films; (2) association of the broad, slow visible emission that competes with the desired sharp, fast UV emission with naturally incorporated defects in powder and ceramic ZnO, and (3) optimization of gallium doping level and hydrogen annealing conditions for more than 150 scintillation samples synthesized and sintered under different techniques. His findings pillared two publications in the prestigious journal of [REDACTED]. In a separate but related project, [the petitioner] established a unique five-mechanism analysis strategy to interpret the temperature-dependent Hall-effect measurements from different wide-band-gap semiconductors, and presented this successful analysis algorithm in two outstanding papers in [REDACTED]. These discoveries laid the first stone on the identification of non-organic scintillators that can be used in outer-space exploration, and smoothed the path for a much cheaper and more stable substitution of indium tin oxides in a wide range of applications such as LED displays and solar cells. [The petitioner's] versatile expertise in spectroscopic and electromagnetic probes also resulted in inter-institution collaborative research, as have [sic] been published in peer-reviewed journals including [REDACTED].

Dr. [REDACTED] points to the petitioner's articles in [REDACTED].

The regulations, however, contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). 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. Again, 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 has not established that the minimal to moderate level of citation for his individual articles is indicative of contributions of major significance in the field.

In addition, Dr. [REDACTED] asserts that the petitioner's "discoveries laid the first stone on the identification of non-organic scintillators that can be used in outer-space exploration, and smoothed the path for a much cheaper and more stable substitution of indium tin oxides in a wide range of applications such as LED displays and solar cells," but he fails to provide specific examples of how the petitioner's findings have affected production of non-organic scintillators for outer-space exploration, have resulted in cheaper and more stable substitution of indium tin oxides in a range of applications, or have otherwise been of major significance to the field. Dr. [REDACTED] speculation about possible future applications of the petitioner's work is not evidence, and cannot establish eligibility for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v). Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Dr. [REDACTED] a senior research staff member of the [REDACTED] [REDACTED] stated:

I have known [the petitioner] since 2007 through collaborative research work between my group at [REDACTED] and the one led by Dr. [REDACTED] where he worked in the Department of Physics.

* * *

In collaboration with the [REDACTED] [the petitioner] investigated the scintillation properties of polycrystalline ZnO. . . . The immediate application of [the petitioner's] investigation is the incorporation of ZnO as the scintillating window of an alpha-particle detector. This detector is associated with a deuterium-tritium (D-T) fusion reactor that generates 14.1-MeV neutron beams with a recoil beam of alpha particles of 3.5 MeV. A broader application of these findings is in the design of detectors in space science – the harsh radiation environment and high temperature bake-out rule out many scintillator materials for this application and leave ZnO one of the few promising candidates.

Dr. [REDACTED] states that the petitioner studied the scintillation properties of polycrystalline ZnO and that an “immediate application of [the petitioner's] investigation is the incorporation of ZnO as the scintillating window of an alpha-particle detector.” In addition, Dr. [REDACTED] mentions that a “broader application” of the petitioner's “findings is in the design of detectors in space science.” The petitioner, however, did not submit documentary evidence showing that the petitioner's specific findings have been applied by others in the development of alpha-particle detectors, that his work has affected the design of detectors in space science, or that his findings otherwise equate to original contributions of major significance in the field.

Dr. [REDACTED] Senior Research Physicist and Director, Semiconductor Research Center, [REDACTED] stated:

One of [the petitioner's] contributions to the semiconductor research community is the rediscovery of neutral impurity (NI) scattering in analysis of temperature-dependent Hall mobility and free carrier concentration data from ZnO and other wide band-gap materials. Such analyses pave the way on immediate applications of ZnO as a semiconductor including photovoltaic devices and LEDs, transparent coating on solar cells, as well as excellent replacement of indium tin oxide (ITO) in the conducting display market.

[The petitioner] demonstrated that by including NI scattering, the temperature-dependent Hall data not only reveal the relatively shallower impurity, but also disclose some much deeper level impurities/defects. Combining with optical characterizations such as infrared absorption and electromagnetic resonance, a more complete identification of the elements, their valence status, and energy levels can be reached. Separation of intrinsic scattering factors from impurity scatterings allows one to estimate the “upper limit” of temperature-dependent Hall mobilities from ideal pure semiconductors. Such a mobility limit serves as

an important reference for future crystal growth, characterization, and device application studies. He expanded this understanding of temperature-dependent intrinsic mobility limit from ZnO to other wide band gap materials, and the predictions for ZnS, CdS, CsSe, as well as ZnO, were verified by reported values in the literature.

[The petitioner's] work on Hall Effect analysis led to three important publications. The first one addressing the role of NI scattering in ZnO was published in 2007 in the 2007 [REDACTED] the other two appeared in the prestigious [REDACTED] in 2008 and 2009.

Dr. [REDACTED] asserts that the petitioner's analyses "pave the way on immediate applications of ZnO as a semiconductor" and are an "excellent replacement of indium tin oxide (ITO) in the conducting display market." In addition, Dr. [REDACTED] mentions that the petitioner expanded "understanding of temperature-dependent intrinsic mobility limit from ZnO to other wide band gap materials." 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 physics 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 medical physicist who performs original research that adds to the general pool of knowledge in the field has inherently made a contribution of "major significance" to the field as a whole. The petitioner has not established that his work has affected the semiconductor industry or research community in a major way, or that his work was otherwise indicative of original contributions of major significance in the field.

Dr. [REDACTED], Associate Professor and Associate Chief Medical Physicist, Department of Radiation Oncology, [REDACTED] stated:

[The petitioner] has productive collaboration with physicists, physicians, and dosimetrists in translational clinic research projects involving stereotactic arc radiotherapy, 4D CT-based pancreatic treatment planning, and automatic target segmentation. His work on image-guided real-time tumor tracking and efficient target delineation of pancreatic cancer has immediate and significant impact in these clinical aspects, since precise escalation of tumor-killing radiation dose to the cancer site while sparing the surrounding normal tissue is the core objective of radiation therapy.

In summary, [the petitioner's] outstanding research work has left a significant mark in the materials and medical physics sciences.

Dr. [REDACTED] asserts that the petitioner's "work on image-guided real-time tumor tracking and efficient target delineation of pancreatic cancer has immediate and significant impact" in clinical aspects of "stereotactic arc radiotherapy, 4D CT-based pancreatic treatment planning, and automatic target segmentation," but there is no documentary evidence showing that his work in those areas has been frequently cited by independent researchers, has led to widespread changes in treatment protocols with corresponding improvement in patient outcomes, or has otherwise been indicative of contributions of major significance in the field. In addition, although Dr. [REDACTED] asserts that the

petitioner's "outstanding research work has left a significant mark in the materials and medical physics sciences," he does not provide specific examples of how other medical and research institutions outside of [REDACTED] have applied the petitioner's work at a level commensurate with contributions of major significance in those fields. USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Dr. [REDACTED] Associate Professor, Department of Radiation Oncology, [REDACTED] stated:

[The petitioner's] critical contribution to the adaptive radiation therapy through real-time tumor tracking, deformable image registration, and 4-dimensional treatment planning puts him at the top of the researches field of medical physics. [The petitioner's] findings and its [sic] implementation in the foreseeable near future will significantly enhance our fighting with cancers in the lung and upper abdomen, including one of the deadliest cancers, the pancreatic cancer, which kills about 40,000 lives a year in the United States.

* * *

Even though all the efforts and cautions have been taken in the planning and delivery processes, the internal target and organ motion introduced by patient breathing is a big challenge for the realization of the two-folded treatment goal when the thoracic and abdomen regions are involved.

[The petitioner] and his colleagues tackled this challenge with one of the most promising approaches in adaptive radiation therapy – the dose-rate-modulated tumor tracking (DRRT). To account for the respiration-induced tumor motion during treatment while keeping the minimal margins, the treatments fields were actively modified to follow the movement of tumor, taking fully advantage of the dynamic multi-leaf collimator (MLC). Compared to the gated treatment, this approach will drastically reduce the treatment time, allowing more patients with affected lung or pancreas functions to be treated with the optimized IMRT plans. On the other hand, the adaptive adjustment of MLC apertures is purely based on the dose-rate modulation, which is related to the real-time patient breathing pattern, and does not require major modification of the delivery system. The later feature is especially a valuable asset, because this implies that most of the current cancer centers in the United States that utilize linear accelerators equipped with dynamic MLCs can adopt this strategy by simply adding an interface to correlate the patient motion with the MLC control system in the delivery unit.

[The petitioner's] another contribution to the radiation therapy field, the deformable image registration (DIR) combined with four-dimensional (4D) treatment planning, serves the same purpose as pointed out above: to reduce the treatment delivery uncertainty and increase the dose evaluation accuracy. By applying DIR, the treatment planning dose, either to the cancerous target or to the organs at risk, can be analyzed, compared, or summed over different breathing phases, transferred to adaptively rescanned images, or overlaid between

different diagnostic/therapeutic image modalities for comprehensive evaluation of treatment quality. By adaptive 4D treatment planning, the interplay effect between patient breathing and dynamic treatment delivery is incorporated in the dose volume analyses, thus assisting the accurate dose escalation to the tumor and determination of normal tissue toxicity. When his findings were published in the leading journal in the radiation therapy field, [REDACTED] and presented at [REDACTED] and [REDACTED] conferences, they received enthusiastic discussion and were viewed by the audience as both inspiring and realistic.

Dr. [REDACTED] asserts that the petitioner's findings and their "implementation in the foreseeable near future" will significantly enhance cancer treatment and that the petitioner's work is among "the most promising approaches in adaptive radiation therapy." In addition, Dr. [REDACTED] asserts that the petitioner's DRRT approach "will drastically reduce the treatment time" and that "most of the current cancer centers in the United States that utilize linear accelerators equipped with dynamic MLCs can adopt this strategy by simply adding an interface to correlate the patient motion." Dr. [REDACTED] also comments on how the petitioner's work with DIR and 4D treatment planning will help "reduce the treatment delivery uncertainty and increase the dose evaluation accuracy." Dr. [REDACTED] however, fails to identify cancer centers in the United States who have successfully utilized the petitioner's approaches, or cancer centers where the petitioner's work has already had an effective track record in increasing dose evaluation accuracy and in reducing treatment times. A petitioner cannot establish eligibility based solely on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49. Dr. [REDACTED] further states that the petitioner's article in *Medical Physics* and his work presented at [REDACTED] and [REDACTED] conferences "received enthusiastic discussion and were viewed by the audience as both inspiring and realistic." There is no documentary evidence showing, however, that the petitioner's findings in [REDACTED] and his conference presentations have been frequently cited by independent researchers, that his treatment methodologies have been successfully implemented at various cancer centers, or that his work has otherwise risen to the level of contributions of major significance in the field.

Dr. [REDACTED] Assistant Professor, Medical Physics Division, Department of Radiation Oncology, [REDACTED] stated:

Bringing with him a fruitful research experience in materials science, [the petitioner] is conducting instrumental research in radiation oncology physics with the primary focus on the clinical impact of such work.

* * *

I am truly impressed by the significance of [the petitioner's] contribution to this field. . . . [The petitioner's] work, as presented in his publications in the prestigious journal of *Medical Physics* and at [REDACTED] conferences, is instrumental in realizing these hard-sought goals in this field.

[The petitioner] is one of the few top researchers that aggressively investigate the adaptive radiation delivery concerning patient breathing induced uncertainty, and comes up with a realistic solution – the dose-rate-modulated tumor tracking (DRRT) using dynamic multi-leaf

collimator (MLC). The DRRT strategy tracks the target motion by speeding up or slowing down the MLC through adaptive dose-rate adjustment, thus allowing dose escalation on the tumor site throughout the delivery procedure. This is extremely critical for patients with lung or pancreatic tumors, since patient breathing may introduce large displacement and deformation to the target in these areas, leading to mistreat of the tumor and harmful irradiation to the surrounding organs. . . . [The petitioner's] work on DRRT technique has been published in [REDACTED] and the clinical implementation is being underway at [REDACTED] and is adoptable to any cancer center in the United States that operates dynamic MLC-based linear accelerator.

To further improve the delivery accuracy of radiation dose in cancer treatment, [the petitioner] emphasized the interplay effect between the delivery sequence and the continuous, periodic respiration of patient redistributes the dose received by the dynamic patient. He introduced a validation method for intensity-modulated radiation therapy (IMRT) treatment plans that based on cumulative dose. . . . This strategy combines the advantages of contrast-enhanced free-breathing computed tomography (CT) and temporal-resolved four-dimensional CT to help physicians and dosimetrists to determine the treatment planning target. All these improvements in planning, delivery, and evaluation of IMRT treatment will benefit patients with lethal cancers in lung and upper-abdomen, because radiation dose spread to the non-tumor organs will be limited at a much more predictable and exact level. These findings of [the petitioner] have been presented at [REDACTED] conferences, and have been adopted as clinical procedures by oncologists, physicists, and dosimetrists at [REDACTED]

In the same manner as Dr. [REDACTED] Dr. [REDACTED] points to the petitioner's published article in [REDACTED] and his presented work at [REDACTED] conferences. Again, there is no evidence showing that the preceding article and conference presentations are frequently cited by independent researchers or otherwise equate to original contributions of major significance in the field. With regard to the petitioner's conference presentations, 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 significantly impacted the medical physics field as a whole or has otherwise risen to the level of contributions of major significance in the field.

In addition, although Dr. [REDACTED] asserts that clinical implementation of the petitioner's work is underway at [REDACTED] and that the petitioner's findings "have been adopted as clinical procedures by oncologists, physicists, and dosimetrists at [REDACTED]" there is no documentary evidence showing that the petitioner's 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 his employer or research institution. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 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] Instructor, Department of Radiation Physics, [REDACTED], stated:

[The petitioner] joined the [REDACTED] in 2010, where he carried on the development of a novel technique for tumor motion management: dose-rate-regulated tumor tracking (DRRT) using DMLC [Dynamic Multileaf Collimator]. [The petitioner] incorporated the interplay effect between patient breathing and dynamic tracking delivery, and deformable image registration (DIR) into 4D treatment planning for real-time tumor-tracking, and validated the dose distribution of the DRRT delivery for step-and-shoot intensity-modulated radiation therapy, stereotactic body radiotherapy and volumetric arc therapy treatment plans. He applied the computer-assisted target delineation based on DIR to treatment of pancreatic cancers, evaluating the respiration-induced target distortion in free-breathing computed tomography and the choice of internal-motion margins. These excellent developments in tumor motion management will significantly improve image-guided radiation therapy, since delivering precise dose to the tumor site and minimizing the radiation toxicity to normal tissues are the most important objectives in cancer care. [The petitioner's] works have been presented during the [REDACTED] conferences and have been accepted for publication in peer-reviewed journals such as [REDACTED]

Dr. [REDACTED] asserts that the petitioner's "developments in tumor motion management will significantly improve image-guided radiation therapy," but fails to provide specific examples of how the petitioner's work is already of major significance to the field. Again, a petitioner cannot establish eligibility based solely on the expectation of future eligibility. *Matter of Katigbak* at 49. There is no documentary evidence showing that the petitioner's DRRT work has been frequently cited by independent researchers or otherwise constitutes a contribution of major significance in the field.

Dr. [REDACTED] Professor in the Department of Radiation Oncology, and [REDACTED] Endowed Chair in Medical Physics, [REDACTED] stated:

Working with Dr. [REDACTED] [the petitioner] extended the innovation of dose-rate-regulated tumor tracking (DRRT). This is a promising strategy aiming at significantly reducing the internal margin while conserving the delivery efficiency, without calling for major modification to the dynamic multileaf collimators (MLCs) that are extensively used on the current clinic services. . . . [The petitioner] is the first researcher who incorporated the interplay effect between patient breathing during radiation therapy and the dose-rate-dependent delivery of an intensity-modulated radiation therapy (IMRT) treatment plan into the design of 4D-IMRT dynamic delivery sequence. This integrated delivery sequencing enables the dosimetric evaluation of 4D plan quality based on the spatial and temporal correlation of patient anatomy, for which [the petitioner] developed a complete procedure featuring deformable image registration and 4D dose accumulation. As an expert in IMRT and image-guided radiotherapy (IGRT), I appreciate the impact of the DRRT technique in the treatment of cancer. Without additional cost to the clinic facility – ultimately to the patients – we are able to escalate tumoricidal doses more precisely to the cancer site while sparing more normal tissues to reduce the risk of complications and maintain the patients' quality of life.

[The petitioner] extended his knowledge in 4D computed tomography (4D-CT) and automatic target segmentation to clinic services that assists dosimetrists to evaluate achievable benefit or potential risk when significant patient anatomy change is indicated by new radiology data. [The petitioner's] contour propagation techniques based on deformable image registration lead to research initiatives involving examination of respiration-induced target distortion in free-breathing CT and validation of the internal margins in planning of treatment of pancreatic cancers. His findings help establishing intra- and inter-institution standard strategies in our battle with this highly-lethal disease. His researches in these areas are both highly original and extremely substantial, as reflected by the manuscripts submitted to the peer-reviewed journals such as the [REDACTED] and presented at [REDACTED] conferences.

Dr. [REDACTED] states that the petitioner "is the first researcher who incorporated the interplay effect between patient breathing during radiation therapy and the dose-rate-dependent delivery of an intensity-modulated radiation therapy (IMRT) treatment plan into the design of 4D-IMRT dynamic delivery sequence" and expresses appreciation for "the impact of the DRRT technique in the treatment of cancer." Dr. [REDACTED] however, fails to provide specific examples of how the petitioner's findings have affected radiation therapy treatment protocols at various cancer centers or were otherwise of major significance to the field. Furthermore, as previously discussed, there is no evidence that the petitioner's DRRT and 4D-CT work is frequently cited by independent researchers or otherwise equates to original contributions of major significance in the medical physics field.

The petitioner submitted letters of varying probative value. Some letters are generalized, without identifying specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17); *see also Visinscaia*, 2013 WL 6571822, at *6 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable").

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 petitioner's eligibility. *Id.* 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.

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 criterion and found that the petitioner failed to establish his eligibility. In the appellate brief, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. 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.

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*

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.