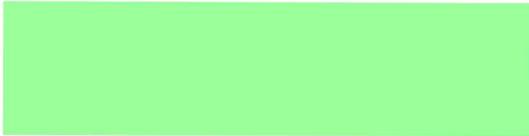


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



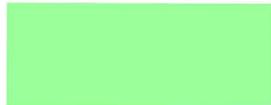
U.S. Citizenship
and Immigration
Services



DATE: **JUN 16 2014**

Office: TEXAS SERVICE CENTER

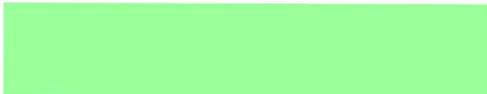
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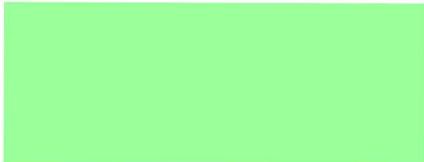
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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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 of the beneficiary as an “alien of extraordinary ability” in business, 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 found that the petitioner had not established that he is “an individual 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 beneficiary’s basic eligibility requirements.

On appeal, the petitioner submits a brief and a previously submitted letter and requests “an entirely new and independent review of the petition.” The AAO conducts appellate review on a *de novo* basis. The AAO’s *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). For the reasons discussed below, upon review of the entire record, the petitioner has not established eligibility for the exclusive classification sought.

I. LAW

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

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

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

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

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

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

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

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

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner 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 antecedent regulatory requirement of three types of evidence. *Id.*

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

II. ANALYSIS

A. 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Moreover, it is the petitioner’s burden to establish that the evidence meets every element of this criterion.

On appeal, the petitioner asserts that his “‘Certificate of Appreciation’ from the [REDACTED] constitutes an internationally recognized award.” In addition to the certificate, the record contains a letter from [REDACTED] Director General and Chief Executive Officer of [REDACTED] thanking the petitioner for his “work on the [REDACTED]” Contrary to the petitioner’s assertion on appeal, the issue is not the title of award. The petitioner did not submit any documentary evidence establishing that the certificate is a nationally or internationally recognized award for excellence in the field, rather than appreciation for the petitioner’s contribution to a specific project. Submitting evidence of the petitioner’s receipt of a prize or award is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) without documentary evidence reflecting that the prize or award is nationally or internationally recognized for excellence in the field of endeavor, which, by definition, goes beyond the awarding entity.

Even if the petitioner were to submit supporting documentary evidence showing that the certificate meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires receipt of more than one nationally or internationally recognized prize or award for excellence. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require a single instance of service as a judge or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree

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

or “a” foreign equivalent degree at 8 C.F.R. § 204.5(i)(2) requires a single degree rather than a combination of academic credentials).

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.”

On appeal, the petitioner asserts that based upon the leadership positions he has held during his career, he “routinely judged the work of others in his field.” Evidence relating to or even meeting the leading or critical role criterion, however, is not presumptive evidence that the petitioner also meets this criterion. If the regulations are to be interpreted with any logic, it must be presumed that the regulation views leading roles as a separate evidentiary requirement from judging.³ To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

The petitioner must submit evidence demonstrating that he participated as a judge of the work of others rather than that his responsibilities in a leading role may have required the incidental evaluation of the work of others. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). It is insufficient to meet the plain language of this criterion based on documentation that reflects expected or likely job duties of judging unless the petitioner demonstrates that he actually participated as a judge of the work of others.

In light of the above, the petitioner has not established that he meets this criterion.

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

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. 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. 2003). Any documented contributions must rise to the level of original business-related contributions “of major significance in the field.” While the petitioner asserts that the director’s focus on the petitioner’s impact in the wider field is

³ Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). 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.

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more appropriate to researchers, regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *8 (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).

Although not addressed on appeal, in response to the director’s request for evidence, the petitioner asserted that his “award for contributions to [redacted] proves that my work was of major significance in the field of endeavor.” As discussed above, however, the record does not contain any documentary evidence to establish the recognition of this award beyond the [redacted] such that the petitioner has established that the certificate was awarded for an original contribution of major significance in the field, rather than appreciation for the petitioner’s contribution to a specific project.

In addition, the petitioner’s resume and a few of the letters reference the petitioner’s work with the [redacted] for the [redacted] system. The record, however, does not contain any evidence from [redacted] regarding the petitioner’s position and achievements there, nor does the record contain any evidence which establishes that the petitioner’s contributions at that agency were original and of major significance in the field.

The petitioner asserts on appeal that the director did not consider all thirteen of the letters submitted with the petition. The director only quoted from a selection of the letters, but concluded that some of the letters did not identify any contributions and that none of the letters identified any contributions of major significance. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that the “letters from physics professors attesting to [the petitioner’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

The evidence must rise to the level of original business-related contributions of major significance “in the field.” On appeal, the petitioner asserts that his “field is information technology in air transport, particularly within [redacted].” The petitioner further asserts that “the adjudicator’s analysis” was flawed because “[i]nternational information technology executives do not ‘impact a field.’” According to the plain language of the regulation, however, beyond demonstrating that the petitioner’s original contributions have been internationally and nationally recognized, the petitioner must establish that his original contributions have been of major significance in the field of information technology, and not only to his employer. *See Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (finding that the alien’s field was medical science rather than nephrology). *See also Visinscaia*, 2013 WL 6571822, at *8.

Mr. [redacted] Project Manager for [redacted] for [redacted] states that the “petitioner’s achievements benefit[t]ed [redacted] by dramatically increasing its revenue.” Mr. [redacted] Indirect Sales Manager for [redacted] states that the petitioner’s

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“work is well recognized and very highly respected.” [REDACTED] Operating System’s Manager at [REDACTED] states that the petitioner has “achieved a novel and excellent work that has demonstrated his unique ability” and “has been very much appreciated by all [REDACTED] subsidiaries.” The letter also outlines four of the petitioner’s projects at [REDACTED] including migration of [REDACTED]’s activities “from batch to [o]nline,” “changing the mainframe generation,” “creating a disaster site,” and “the mobile web application of [REDACTED]” Dr. [REDACTED] Distinguished Professor and former Dean of Engineering for [REDACTED], praises the petitioner’s “outstanding knowledge regarding many types of software and hardware.” Dr. [REDACTED] further describes the petitioner’s achievements for [REDACTED], which include “converting the airline to be web-enabled, designing its new portal, developing the self-service booking system, and most recently, using mobile digital devices for self-service.” All of these projects are specific to [REDACTED] and the record lacks evidence of the significance of these projects in the field as a whole.

[REDACTED] Senior Project Manager at [REDACTED] states the petitioner, acting as the representative for [REDACTED] for the [REDACTED] “worked closely with [REDACTED] and [REDACTED] to develop an online Smartphone application which enables the passengers [to] perform[] all travel[] related activities...from their mobile phones” and that this “was a real revolution in the [a]irline industry.” While Mr. [REDACTED] implies a wider impact, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990). Mr. [REDACTED] does not explain how the petitioner’s work on this project revolutionized the industry as claimed. The remaining letters similarly praise the petitioner, calling him an “expert in new technologies” and commending him for “his leadership.” While the petitioner’s references think highly of him, none of the thirteen submitted letters or other submitted evidence establishes that his contributions are of major significance in the field, rather than his employer, as required by the plain language of the regulation.

Having a lengthy career and expertise in the field are not contributions of major significance in and of themselves. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field, and not just his employer, at a significant level in an original way. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. See *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215, 221 (Assoc. Comm’r 1998).

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 letters from experts 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; 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”). 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 [occupation] who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, --- F. Supp. 2d ----, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity or detail, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

In light of the above, the petitioner has not established that he meets this criterion.

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

Based upon the evidence in the record, the petitioner has established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation.

The record contains two printouts from [REDACTED].com, certified English translations of two documents relating to the petitioner's remuneration, without the accompanying document in Arabic, and a document signed by prior counsel.

Regarding the "median salary by job" information for seven occupations from [REDACTED].com, this information does not identify the high end salaries for those performing work with similar responsibilities as the petitioner. According to the information provided, the median salary for an Information Technology Manager is 125,766 EGP. The plain language of the regulation requires the petitioner to establish that his salary is high when compared to others in the field. As such, the median salary information provided does not meet this requirement. Regarding the "personal salary report overview," the detailed information on the left hand side is not visible. For example, the "Job Offer" title is not visible, nor is information regarding years of experience, etc. Therefore, the details upon which the salary comparison is based are not apparent.

In 2011, the petitioner received 138,494.04 EGP in total income, including 8,447.71 EGP in remunerations and profits and 102,673.40 in incentives. As such, any comparison with statistics relating to salary only is not a meaningful comparison. Moreover, the petitioner must not only submit evidence of remuneration for services, but also submit evidence that his remuneration is significantly high when compared to the total remuneration that others in the field receive.

As previously mentioned, the petitioner did not provide the original documents regarding his total remuneration, but only the certified translations. Furthermore, the total claimed remuneration of 154,000 EGP is based, in part, on a statement from the petitioner's prior counsel. Prior counsel does not explain how the additional items are separate from remuneration, profits and incentives. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In light of the above, the petitioner has not established that he meets this criterion.

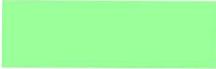
B. Summary

As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that he satisfies the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

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 failed to demonstrate that he has satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. 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).



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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.