



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 12 2014** Office: TEXAS SERVICE CENTER

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:

SELF-REPRESENTED

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 employment-based immigrant visa petition on July 19, 2013. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on August 19, 2013. The appeal will be dismissed.

According to the petition, filed on October 22, 2012, the petitioner seeks classification as an alien of extraordinary ability in the sciences, specifically, as a research scientist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section § 203(b)(1)(A)(i) of the Act; 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 the basic eligibility requirement 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)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner files an addendum to the Form I-290B, Notice of Appeal or Motion, an appellate statement and supporting documents. The petitioner asserts that he meets the criteria under the regulations at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iv), (v) and (vi). For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, the AAO will dismiss the petitioner's appeal.

I. THE 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.

United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d 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 case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small

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 (vi).

percentage who are at the very top in the field of endeavor, or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish the basic eligibility requirement by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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

The director concluded in his July 19, 2013 decision that the petitioner did not meet this criterion. On appeal, the petitioner challenges the director's finding, stating that he has received the following awards that meet the criterion: (1) [REDACTED]

[REDACTED]

the government of India. The petitioner has not shown that he meets this criterion.

First, the fellowships all constitute research funding opportunities. Research funding, through grants or fellowships, serve to fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. The past achievements of the principal investigator or fellowship recipient are a factor in grant proposals; the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant or funding fellowship is principally designed to fund future research, and not to honor or recognize excellence. Thus, the fellowships are not awards for excellence.

Second, academic study is not a field of endeavor, but training for a future field of endeavor. As such, pre-doctoral and postdoctoral fellowships cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. While they may be prestigious, fellowships are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. Receiving funding for one's research and academic training does not constitute receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is

² The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

presented not to established researchers with active professional careers, but rather to students seeking to further their research, training, and experience. Indeed, according to an online printout the petitioner submitted entitled "[redacted]" "[t]his is a training program in Cancer Research supported by funds from the [redacted]"

The online printout refers to scientists who participate in this training program as "Ph.D. and M.D. Ph.D. students" and "pre- and post-doctoral students." As such, none of the petitioner's three fellowships meet this criterion.

Third, the evidence in the record is insufficient to show that the petitioner's [redacted] fellowship constitutes a nationally or internationally recognized prize or award for excellence. To show his receipt of the fellowship, the petitioner has submitted an April 15, 2013 certificate, noting that [redacted] granted him a 2-year postdoctoral training fellowship from October 2010 through September 2012. The petitioner has also submitted other documents relating to his receipt of the fellowship, including a September 8, 2010 email from [redacted], a professor at the Department of Cellular and Structural Biology at the [redacted] and President of [redacted] Funding, and an undated memorandum from [redacted]. These documents establish the petitioner's receipt of the fellowship.

According to a [redacted] document, Texas voters established [redacted] and authorized the issuance of \$3 billion in bonds to fund cancer research and prevention programs and services. The document provides that [redacted] accepts applications and awards grants for a wide variety of cancer-related research and for the delivery of cancer prevention programs and services by public and private entities located in Texas." It further provides that "[redacted] supports innovations and the selection of research projects emphasizing immediate or long-term medical breakthroughs; commercialization opportunities for research, and prevention services and health education for citizens with culturally appropriate information about ways in which their risks of developing and dying from cancer can be reduced." This document does not specifically provide information relating to the nomination or selection process of a [redacted] fellowship, or the criteria under which the petitioner was selected to receive the fellowship.

Instead, the record includes conclusory statements that this fellowship constitutes a nationally or internationally recognized prize or award for excellence. According to [redacted] August 13, 2012 letter, "[a] [redacted] fellowship is a prestigious and competitive award that is only offered to promising young investigators who have distinguished themselves in the field of cancer research." In his July 16, 2012 letter, [redacted] a professor and Director of Section on Basic Science, Division of Hematology and Oncology, [redacted] made a similar statement. According to [redacted] fellowship "is a very prestigious fellowship and selection is very competitive and [it is] only offered to the distinguished young distinguished [sic] investigators in the field of cancer research." Not every competitive fellowship, however, constitutes an award for excellence. Rather, the letters indicate the [redacted] fellowship is a funding source for promising young researchers.

Fourth, the evidence in the record is insufficient to show that the petitioner's [REDACTED] pre-doctoral fellowship constitutes a nationally or internationally recognized prize or award for excellence. To show his receipt of the fellowship, the petitioner has submitted an April 19, 2013 certificate, noting his receipt of the 3-year fellowship from May 2003 through April 2006. This document has minimal evidentiary weight. Like a delayed birth certificate, a certificate issued over seven years after the completion of the fellowship, raises serious questions regarding the truth of the facts asserted. *Matter of Bueno*, 21 I&N Dec. at 1033; *Matter of Ma*, 20 I&N Dec. at 394. As such, this certificate does not establish the petitioner's receipt of the fellowship. The petitioner, however, also submitted a November 2, 2012 letter from [REDACTED] asserting that the petitioner was associated with a [REDACTED] project, [REDACTED] during the years 2003-2006. In addition, the record includes an online printout from [REDACTED] funded this project from February 2003 through July 2006.

The petitioner, however, has not provided sufficient evidence relating to the nomination or selection process of the fellowship that establishes the fellowship as a nationally or internationally recognized prize or award for excellence. According to an April 24, 2013 letter from [REDACTED] [REDACTED] "is a very prestigious fellowship and selection is very critical which includes a selection panel of a group of scientists from both India and France." [REDACTED]; not explain his knowledge of the [REDACTED] selection processes and does not list any affiliation with [REDACTED] on his curriculum vitae. Neither [REDACTED] nor the petitioner has provided evidence in support of [REDACTED] conclusory statement. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, [REDACTED]'s statement does not establish that a [REDACTED] fellowship is a nationally or internationally recognized award for excellence rather than a prestigious fellowship designed to provide educational opportunities to promising Ph.D. students.

Fifth, the evidence in the record is insufficient to show that the petitioner's [REDACTED] doctoral fellowship constitutes a nationally or internationally recognized prize or award for excellence. The petitioner has submitted a January 28, 2002 letter from [REDACTED], Human Resource Development Group, Examination Unit, noting that the petitioner's examination result qualified him "for consideration for award of Junior Research Fellowship in [] Chemical Sciences under the [REDACTED] fellowship schemes." The record also includes a July 24, 2002 letter from [REDACTED] Controller of Examinations, inviting the petitioner to take the [REDACTED] fellowship test on July 14, 2002. A handwritten notation amends the date of the letter to June 24, 2002, which predates the test. The letter provides that the invitation was based on the petitioner's scoring in the top 20 percent in the subject of sciences at the "Joint [REDACTED] for the JRF [Junior Research Fellowship] and Eligibility for Lectureship." The record does not contain the results of this test and the petitioner indicates on his biographical sketch only that he was "short listed" for the [REDACTED] fellowship.

According to [REDACTED] junior research fellowship is “very competitive and one of the highest fellowship offered by the Government of India in the field of scientific research.” Neither [REDACTED] nor the petitioner has provided sufficient evidence in support of the conclusory statement. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990). The petitioner has presented insufficient evidence relating to the prestige or reputation of this fellowship that establishes the fellowship as a nationally or internationally recognized prize or award for excellence rather than a training opportunity for promising students.

Finally, the record includes documents relating to the petitioner’s other postdoctoral positions and fellowships, including those with [REDACTED]. The record also includes a document entitled “[REDACTED]” noting that the petitioner has received other awards and honors, including a 2001 award from the [REDACTED] and 1995 through 1999 national scholarship for higher studies. On appeal, the petitioner has not asserted that these accomplishments meet the criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The director concluded in his decision that the petitioner did not meet this criterion. On appeal, the petitioner asserts that he meets this criterion, because he is “an active member of [REDACTED].” The petitioner further provides that the association’s “active membership is only offered to the internationally recognized scientist[s] with outstanding achievements in the field of cancer research.” The petitioner states in his addendum to his Form I-290B:

[I]n [the] active membership selection process, the applicants must be nominated by two current Active, Emeritus, or Honorary members in good standing in the [REDACTED] who can attest to the candidate’s achievements, and affirm that his or her research adheres to accepted ethical standards. Indeed, there are many [REDACTED] members of [REDACTED]

investigators or professors [who] are also belongs [sic] to active membership.

The petitioner has not shown that he meets this criterion. First, the petitioner has submitted a May 1, 2013 email from the membership services department, stating that the petitioner's membership in the association "has been transferred from Associate to Active, effectively immediately." This email shows that at the time the petitioner filed the petition in October 2012, he was not an active member. Rather, he was an associate member. The petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner must show that his associate membership, rather than active membership, meets this criterion, because he cannot secure a priority date based on the anticipation of future accomplishments. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed, which in this case, was October 22, 2012. See *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). The petitioner has not shown that requires outstanding achievements of its associate members, as judged by recognized national or international experts in their disciplines or fields, as required by the plain language of the criterion.

Regardless, the petitioner has not demonstrated that active membership requires outstanding achievements as judged by recognized national or international experts. The petitioner submitted a June 25, 2013 letter, entitled "Official Membership Certification Letter," from Director of Membership of . The letter provides that "Active membership is open to investigators worldwide who have conducted two years of research resulting in peer-reviewed publications relevant to cancer and cancer-related biomedical science, or who have made substantial contributions to cancer research in an administrative or educational capacity." The petitioner has not documented what considers a "substantial contribution" or who judges whether a contribution is a substantial contribution. Regardless, given the use of the conjunction "or," requires only two years of research that resulted in publication of scholarly articles. The petitioner has not shown that publication of peer-reviewed articles constitutes outstanding achievements.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the regulation views membership in qualifying associations as a separate evidentiary requirement from publication of scholarly articles. Thus, membership in an association that requires publication of peer-reviewed articles does not constitute membership in a qualifying association absent evidence showing that publications in the field inherently constitute "outstanding achievements." Cf. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010) (upholding a finding that scholarly articles are not definitive evidence of contributions of major significance absent evidence of their major significance in the field).

Finally, the petitioner has submitted a document entitled [REDACTED] indicating his membership in the [REDACTED] and [REDACTED]. On appeal, the petitioner has not asserted that his memberships in these associations meet the criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9.

Accordingly, the petitioner has not presented documentation of his 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 petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

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

The director concluded in his decision that the petitioner has met this criterion. While much of the evidence postdates the filing date of the petition, the record does contain evidence that the petitioner was a listed reviewer for a peer-reviewed journal in his field prior to the date of filing. Thus, the petitioner has established that he meets this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director concluded in his decision that the petitioner did not meet this criterion. On appeal, the petitioner asserts that he meets this criterion, based on (1) his scientific publications in peer-reviewed journals, (2) citations of his work by other researchers in the field, (3) oral presentation of his work at international conferences and invitations to do so, (4) supporting letters from scientists explaining his contributions in the field of neuro-degeneration, viral oncology and cancer research, (5) commercialization of his work, and (6) his contribution as an educator.

The petitioner has not shown that he meets this criterion. First, publication of the petitioner's articles is insufficient to show he meets this criterion. In an undated document entitled "Statement of [the Petitioner] Regarding Continue Work Plan in the United States," the petitioner stated that he has "already published over five international peer-reviewed journals as well as [] presented [his] work in various international conferences and workshops." The petitioner has also submitted documents showing professional publications have invited him to submit articles for publication.

As noted, the regulations contain a separate criterion regarding the authorship of published articles. See 8 C.F.R. § 204.5(h)(3)(vi). Evidence directly relating to one criterion is not presumptive evidence that the petitioner meets a second criterion. Such a presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meets at least

three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3). Accordingly, the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication of articles is not sufficient evidence under this criterion absent evidence that the articles are of “major significance.” *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010). In *Kazarian*, the court reaffirmed its holding that the AAO’s adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a published article is a contribution of major significance, a relevant factor is the impact an article has after publication. In this case, the petitioner has not submitted sufficient evidence showing that the impact of any of his articles has risen to such a level that the article constitutes a contribution of major significance in the field.

Second, citations to the petitioner’s articles are insufficient to show he meets this criterion. The petitioner has provided a document indicating that four of his articles have been minimally to moderately cited. The petitioner has not specified the author of this document, the source of this document, or the source of the information contained in the document. The record also includes a May 2013 online printout from scholar.google.com, showing that the petitioner’s articles have been cited minimally to moderately. As noted, the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, a May 2013 document relating to the citation frequency of the petitioner’s articles does not establish the impact of the articles, or that the articles constitute contributions of major significance in the field, at the time the petitioner filed the petition in October 2012. Moreover, the petitioner has not submitted sufficient evidence showing that his most frequently cited article, which garnered moderate citations, has impacted or advanced the field significantly such that it constitutes a contribution of major significance in the field. Specifically, the record lacks evidence that moderate citation in the petitioner’s area of research is indicative of major significance. The record contains a July 30, 2012 letter from [REDACTED] a professor at the [REDACTED]. In this letter, while he does not provide the highest number of citations for any one of his own articles individually, he does indicate that he has garnered over 1,000 citations, a number well above the petitioner’s number of citations.

Third, although the documents in the record show that the petitioner’s abstracts have been accepted for oral and poster presentation at conferences, the petitioner has not demonstrated the impact of these presentations upon dissemination in the field. According to a document entitled “Biographical Sketch,” supported by presentation abstracts, the petitioner has participated in a number of conferences. According to a welcome letter entitled “[REDACTED] the international conference [REDACTED] is “a programme of exceptional scientific excellence” and “provides a great opportunity for scientists from all over the world to share their thoughts, findings and progress in this attractive and interesting setting.” The evidence in the record does not establish that the petitioner’s presentations at the conferences constitute contributions of major significance in the field, such that the presentations significantly advanced or fundamentally affected the field as a whole. At best, the evidence shows that the petitioner’s research, as presented in conferences, has some relevance and has garnered some interest in the field.

Fourth, the petitioner submitted reference letters in support of the instant petition, some of which reference the authors' support of the petitioner's national interest waiver petition, a lesser classification pursuant to section 203(b)(2)(B)(i) of the Act. While these letters establish that the petitioner's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific 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. The evidence in the record demonstrates that the petitioner has performed original research that adds to the general pool of knowledge. For example, [REDACTED] stated in his April 24, 2013 letter that the petitioner's work "increased [] fundamental knowledge in participation of nucleic acids in protein misfolding and initiation and propagation amyloidogenesis" and his current research continues to "add to [the] understanding of cell biology and developmental processes that are expected to lead to new discoveries for better public health." [REDACTED] stated in her August 13, 2012 letter that the petitioner's "current research [] adds to [the] understanding of cell biology and cancer." [REDACTED] stated in his July 30, 2012 letter that the petitioner's postdoctoral work "offered new insight to overcome [] expression and purification problems." Not every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. In this case, the petitioner has not submitted sufficient evidence showing contributions of major significance.

The reference letters do not show that the petitioner has made qualifying contributions. Rather, they speculate that the petitioner's findings might in the future impact the field. For example, Dr. [REDACTED] an account manager at [REDACTED] stated in his July 15, 2012 letter that the petitioner's research "will contribute towards an understanding of oncogenic pathways and will provide an insight into the initiation, propagation and chemoresistance of various cancers in terms of [REDACTED] profile. His research has great potential for application in cancer diagnosis & therapeutics." [REDACTED] a professor of biochemistry in the [REDACTED] [REDACTED], Director of the National Institute of Science and Technology for Structural Biology and Bioimaging and Scientific Director of the [REDACTED] [REDACTED] stated in his August 15, 2012 letter that the petitioner's "work may bring important contributions and benefits to the global community's commitment to control neurodegenerative and tumoral diseases around the world." [REDACTED] Senior Scientist at [REDACTED] [REDACTED] stated in his September 4, 2012 letter that the petitioner's "[REDACTED] profile research will contribute towards an understanding of oncogenic pathways and will provide an insight into the initiation, propagation and chemoresistance of multiple cancer types. Therefore his research has great potential for application for cancer diagnosis and therapeutics." [REDACTED] in his April 29, 2013 letter, provides similar information, asserting that the petitioner's work on pancreatic cancer demonstrated that targeting specific [REDACTED] "may provide novel targets for restoring or enhancing anti-tumor response" to the standard therapy for pancreatic cancer, [REDACTED] The record lacks evidence of other research teams pursuing new treatments for pancreatic cancer based on the petitioner's work. Rather, [REDACTED] stated that he was "looking forward to [the petitioner's] contribution in [the] important area of research" of pancreatic cancer.

[REDACTED] an associate professor at [REDACTED] states in his July 24, 2012 letter, that the petitioner produced data suggesting an eventual suitable molecular target for the KSHV virus. [REDACTED] provides a similar assertion. Neither letter, however, provide examples of any research team pursuing that target. Similarly, [REDACTED] asserts that the petitioner's work "indicates novel insight towards overcoming viral protein expression and purification problems" without explaining how the petitioner's insights have already influenced the field. [REDACTED] stated in her August 13, 2012 letter that the petitioner "has the potential to have [a] successful career in biomedical research." [REDACTED] also notes that the petitioner "is a promising young scientist with a limitless future ahead of him" and that she "anticipate[s] that [the petitioner] will make more significant contributions and discoveries" in the future. While the record includes numerous attestations of the potential impact of the petitioner's research, none of the petitioner's references provide examples of how the petitioner had already made contributions of major significance in the field.

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 has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from colleagues or associates that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).³ The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l*, 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, as this decision has done, 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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

³ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

While the letters confirm that the petitioner's work is original and contributes to the pool of knowledge in the field, the letters do not establish that his impact in the field has risen to a level consistent with a contribution of major significance.

Fifth, as evidence of the commercialization of his work, the petitioner submits a July 7, 2013 letter from [REDACTED]. According to this letter, [REDACTED] publishing house, in collaboration with the petitioner's university library, [REDACTED] selected the petitioner's doctoral work "[REDACTED]

[REDACTED] for publication. According to a July 19, 2006 letter from [REDACTED] a professor of biological chemistry and dermatology at the [REDACTED] Medicine, the petitioner successfully defended his doctoral thesis in 2006, with a "high honors" rating. Although [REDACTED] stated that her publishing house "only select[s] the most significant and original research contribution in the scientific field" for publication, she did not specifically note in her letter the significance of the petitioner's article or the criteria under which her publishing house determines the significance of the petitioner's article. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. at 17. [REDACTED] publishes and markets for several years in publishing [sic] different graduation works as paperbacks." She requests that the petitioner confirm his interest in order to receive a brochure. The petitioner does not submit any information about [REDACTED] rather, he submits evidence about [REDACTED]

[REDACTED] Thus, the record does not resolve whether [REDACTED] is a peer reviewed publication or a vanity press that, for a fee, prints, binds, and makes available for sale graduate theses. Moreover, as [REDACTED] letter postdates the filing of the petition in October 2012, it does not establish the petitioner's visa eligibility at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Sixth, the petitioner's role as an educator does not establish he meets this criterion. On appeal, the petitioner has filed documents relating to his appointment as a lecturer at the [REDACTED] and student surveys of his spring 2013 chemistry class. These documents postdate the filing of the petition. As such, they do not establish the petitioner's eligibility for the visa petition at the time of filing in October 2012. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, the petitioner has not submitted evidence showing that his teaching constitutes an original contribution, such that he is the first or one of the first people to have taught particular theories or concepts, or a contribution of major significance, such that his teaching substantially impacted or advanced the field as a whole.

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of mechanical engineering. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director concluded in his decision that the petitioner has met this criterion. The petitioner has submitted a document entitled ' [REDACTED] ' indicating that he has authored 11 manuscripts, some of which have appeared as articles in peer-reviewed journals. The record includes copies of the petitioner's articles published in a number of professional publications, including [REDACTED]

Accordingly, the petitioner has presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

III. CONCLUSION

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

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 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 the AAO concludes 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, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

⁵ The AAO maintains *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); 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).

(b)(6)

NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.