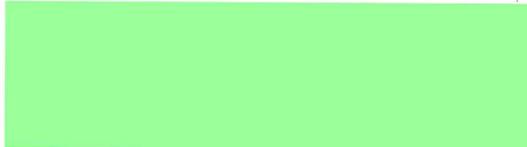


(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: **NOV 06 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:

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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We rejected the petitioner's appeal as untimely on July 9, 2014. On August 29, 2014, we reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision based on the assertions and evidence that accompanied the appeal. We will dismiss the appeal.

The petitioner, a civil engineer and business owner, 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim. In addition, the director determined that the petitioner had not established that she was among that small percentage at the very top of her field of endeavor.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director found that the petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (viii), and (ix), but that she had not sustained national or international acclaim at the very top of the field.

On appeal, the petitioner submits a statement contesting the director's findings and a brief. The petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), (vi), (viii), and (ix), that the director's final merits determination was in error, and that the director failed to properly consider the submitted evidence.

For the reasons discussed below, we will uphold the director's determination that the petitioner has not established her eligibility for the classification sought. Although the petitioner's evidence is sufficient to meet the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), we withdraw the director's findings that the petitioner's evidence meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (viii), and (ix). Accordingly, the petitioner has failed to demonstrate that she satisfies the antecedent regulatory requirement of three types of evidence. 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). Furthermore, as will be explained in the final merits determination, the evidence of record fails to demonstrate that the petitioner has sustained national or international acclaim at the very top of the field.

## 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. 723 101<sup>st</sup> 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, internationally 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.<sup>1</sup> 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

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<sup>1</sup> 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).

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)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-20.

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 apply the two-step analysis dictated by the *Kazarian* court.

## II. Analysis

### A. Evidentiary Criteria<sup>2</sup>

*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 her eligibility. On appeal, the petitioner asserts that the director disregarded and misinterpreted her awards.

The petitioner submitted evidence that she received the following:

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<sup>2</sup> 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.

1.

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11.



3.

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5.

6.

7.

8.

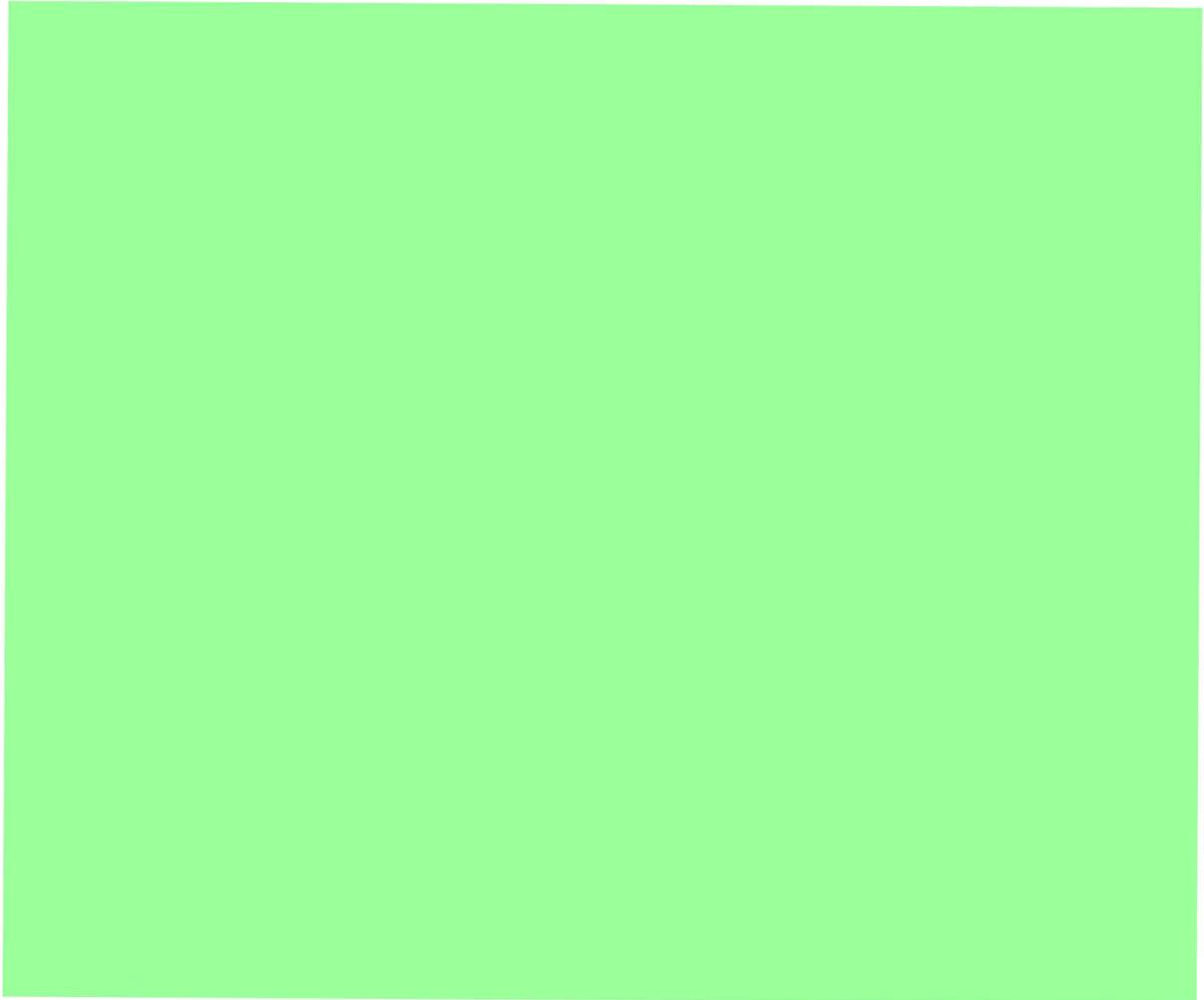
9.

With regard to items 1 – 6, the petitioner submitted information about the [REDACTED] [REDACTED] from the online encyclopedia *Wikipedia*, but again, there are no assurances about the reliability of the content from this open, user-edited internet site. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. Accordingly, we will not assign weight to information for which *Wikipedia* is the source. Regardless, not every prize issued by a national organization is a nationally recognized prize or award for excellence in the field of endeavor. The petitioner submitted no documentation to establish that the awards and certificates outlined in items 1-6 are nationally recognized as awards of excellence in her field. In addition, the petitioner submitted information about the [REDACTED] printed from its website, but the submitted material does not mention the petitioner's company's awards or demonstrate their national or international recognition. Regarding item 7, there are no circulation

figures for [REDACTED] showing that [REDACTED] brief mention in the publication is indicative of national or international recognition. Additionally, items 8 – 9 are reflective of local recognition rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of “the alien’s receipt” of nationally or internationally prizes or awards. Items 1 – 9 were presented to [REDACTED] rather than to the petitioner.

The petitioner also submitted various professional certifications for herself and her company:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.



The preceding certifications, license, qualification certificates, and credit rating certificates do not constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In addition, items 3 – 9 were issued to [REDACTED] rather than the petitioner.

Additionally, the petitioner submitted her academic qualifications:

1. A diploma for graduating from a 4-year program in Biology from [REDACTED] (July 1984);
2. A Certificate of Graduate Study in Municipal Engineering from [REDACTED] (December 1996);
3. A Certificate of Course Completion for taking a [REDACTED] [REDACTED] from December 10, 2005 to November 22, 2006; and
4. A [REDACTED] issued by the [REDACTED] for completing studies at [REDACTED] (March 2008).

Regarding items 1 – 4, these certificates and diplomas show that the petitioner met the educational course requirements, but they are not “prizes or awards for excellence” in civil engineering. Academic study and occupational training courses do not constitute nationally or internationally recognized prizes or awards in the petitioner’s field of endeavor.

In response to the director’s RFE, the petitioner submitted Google search results listing her as “Candidate of the [REDACTED] in 2014. While the online search results identify the petitioner as a “Candidate” for the 2014 award, there is no evidence showing that she received the award. Being a candidate for an award does not constitute receipt of that award. The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In addition, the petitioner must establish her eligibility 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). Without evidence showing that the petitioner had received the “Most Beautiful Female Institute Director of Survey and Design Industry” award as of the petition’s January 21, 2014 filing date, we cannot consider it as evidence to establish her eligibility at the time of filing. Regardless, the petitioner has not established that her “[REDACTED] honor is an award for excellence in her field of endeavor, civil engineering.

The petitioner’s response to the RFE included seven additional award certificates in the Chinese language that were not submitted with a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Despite the director’s RFE stating that for “[a]ll non-English language documents must have an English translation,” the petitioner failed to submit proper translations for the seven additional certificates in the Chinese language. Accordingly, the untranslated certificates will not be accorded any weight in this proceeding.

With respect to the prizes and awards claimed by the petitioner for this regulatory criterion, the petitioner did not submit documentary evidence demonstrating the national or international recognition of her particular awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally recognized in the field of endeavor and it is her burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner’s specific awards were recognized beyond the presenting organizations at a level commensurate with nationally or internationally recognized prizes or awards

for excellence in the field. Accordingly, the petitioner has not established that she meets this regulatory criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. On appeal, the petitioner asserts that the director “misunderstood and misinterpreted” her evidence.

The petitioner submitted what she identifies as two “Books” entitled [REDACTED] [REDACTED] 1<sup>st</sup> Edition (2012) and [REDACTED], 2<sup>nd</sup> Edition (2012). The “books” are comprised of company information and promotional material for [REDACTED]. The author of the books was not identified as required by the plain language of this regulatory criterion. In addition, the books are about [REDACTED] and not the petitioner. The plain language of the regulation requires “published material about the alien.” Materials that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at \*1, \*7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Furthermore, the petitioner did not submit evidence such as objective circulation figures showing that the books are major trade publications or other major media.

The petitioner submitted pages 244-247 from [REDACTED]. The author of the material was not identified as required by the plain language of this regulatory criterion. In addition, the material is about [REDACTED] and not the petitioner. The petitioner also submitted information about [REDACTED] from its interior cover page and printed from its website. USCIS, however, need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). There is no objective documentary evidence showing that [REDACTED] is a major trade publication or form of major media.

In light of the above, the petitioner has not established that she 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 director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the director’s determination on this issue will be withdrawn. Again, the AAO conducts appellate review on a *de*

*novo* basis. See *Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petitioner submitted a certificate from [REDACTED] stating:

To [the petitioner]:

This is to certify that in accordance with regulations in the document [REDACTED] [2006] No. 73), and after the examination and confirmation of the [REDACTED] you were found meeting the requirements for the bid appraisal expert and has been employed as a bid appraisal expert of [REDACTED]

The preceding certificate does not include an address, a telephone number, or any other information through which the [REDACTED] can be contacted. The lack of proper contact information as a means for verifying the information in the certificate diminishes its reliability. Regardless, the petitioner did not submit documentary evidence showing her actual participation as a judge. Submitting documentary evidence reflecting that the petitioner met the requirements for working as a bid appraisal expert without evidence demonstrating whose work she judged is insufficient to establish eligibility for this criterion. Moreover, the petitioner failed to establish that she judged the work of others in the same or allied field of specialization.

In addition, the petitioner submitted a January 2014 “Certificate of Job Description” from [REDACTED] stating:

This is to certify that [the petitioner] has been the Chairman, Senior Engineer and Chief Engineer of Water Supply and Drainage of [REDACTED] China since 2000, and Chairman of our U.S. subsidiary [REDACTED] since March 2013.

\* \* \*

[The petitioner] has also participated on a panel or acted individually as the judge of others’ work in civil engineering. For instance, as the top administrative and technical leader of the company, she is the ultimate decision maker in human resources matters involving the professional staff as a whole. It is her that evaluates the qualifications of candidates for civil engineer positions; and it is her that regularly assesses the performance of civil engineers already hired for promotion and pay raise.

The company official who authored the preceding document is not identified. The certificate states that the petitioner has “participated on a panel or acted individually as the judge of others’ work in civil engineering,” but merely repeating the language of the regulations does not satisfy the petitioner’s burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at \*1, \*5 (S.D.N.Y.). The plain language of this regulatory criterion requires evidence that the petitioner has served as “a judge of the work of others.” The petitioner has not established that performing routine managerial duties such as hiring and assessing subordinates’ job performance equates to participation as a judge of the work of others in the field. 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). The regulation cannot be read to include every informal instance of staff supervision or human resources management. Moreover, the assertions in the preceding “Job Description” do not constitute evidence of the petitioner’s participation as a judge. In this instance, there is no documentary evidence of the petitioner’s participation in a formal judging capacity, either on a panel or individually, as specified at 8 C.F.R. § 204.5(h)(3)(iv).

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

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The director stated that the submitted evidence did not show that the petitioner’s contributions are considered to be of major significance in the field of endeavor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Here, the evidence must rise to the level of original 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

On appeal, the petitioner points to the evidence submitted for the awards criterion as documentation that she also meets this regulatory criterion. The petitioner’s awards were previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the prizes and awards criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, there is no documentary evidence showing that the petitioner’s construction projects have affected the field in a major way, have influenced civil engineering practices throughout the industry, or have otherwise risen to the level of original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to the local construction

projects performed by her company. 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).

In addition, the petitioner mentions that she founded a company in New York named [REDACTED] but there is no documentary evidence showing that her work for the company rises to the level of original contributions of major significance in civil engineering. The petitioner also points to her exploration of business opportunities in the United States through her meetings with [REDACTED] (Under Secretary for International Trade at the U.S. Department of Commerce), [REDACTED] Alabama), a delegation of U.S. mayors at a seminar of the [REDACTED], and with representatives of Perkins Eastman, PEI Partnership Architects, and Nadel Architects. Although the petitioner submitted photographs, e-mails, and correspondence showing that she attended meetings with the preceding officials and company representatives to explore future business opportunities, there is no documentary evidence showing any specific construction projects resulting from those meetings and that the petitioner's original work was of major significance to the field of civil engineering. Speculation about possible future impact 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). Again, 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. at 49.

In addition, the petitioner points to journal articles that she authored in [REDACTED] and [REDACTED]. The regulations 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 1030, 1036 (9th Cir. 2009), the court held that publications 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. There is no presumption that every published article is a contribution of major significance; rather, the petitioner must document the actual impact of her article. In this instance, there is no citation evidence or other documentation showing that the petitioner's published findings have affected the civil engineering field at a level indicative of original contributions of major significance in the field.

The petitioner also points to pages 244-247 from [REDACTED] that provide an overview of [REDACTED] and illustrations of its projects. Although the publication includes images of the petitioner's construction designs, there is no evidence showing that her work was of major significance to the field of civil engineering. Without additional, specific evidence showing that the petitioner's work has been unusually influential, has substantially affected the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that she 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 director determined that the petitioner failed to establish eligibility for this regulatory criterion. The petitioner, however, has documented her authorship of scholarly articles in the field of civil engineering in professional journals such as [REDACTED]

[REDACTED] As the petitioner has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi), the director's determination is withdrawn. Accordingly, the petitioner has established that she meets this regulatory criterion.

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

The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the director's determination on this issue will be withdrawn. Again, the AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petitioner submitted documentation that she is a director and founder of [REDACTED]. Although the petitioner has performed in leading role for the company, there is no documentary evidence showing that [REDACTED] has a distinguished reputation.

The petitioner also submitted evidence that she is the founding chairperson and the senior engineer of [REDACTED]. As such, the petitioner has performed in a leading or critical role for the company. With regard to the company's reputation, the petitioner submitted a "List of the 2013 Outstanding Design Institutions in China" in the "Industry Style" section of [REDACTED] that identifies [REDACTED] among more than two hundred construction and design companies. In addition, petitioner submitted multiple awards and certifications earned by her company, but there is no evidence of their recognition beyond the presenting organizations. The preceding documentation shows that [REDACTED] has been honored by the [REDACTED] and various other organizations, and that the company has received some media attention, but it is not sufficient to show that the company has achieved eminence or distinction in the Chinese construction industry. Accordingly, the petitioner has not established that [REDACTED] has earned a distinguished reputation.

In addition, the petitioner submitted a September 19, 2012 letter from the [REDACTED] [REDACTED] stating that she and another individual were "elected as the Deputy Presidents" of the association. The preceding letter does not include an address, a telephone number, or any other information through which the [REDACTED] can be contacted. The lack of proper contact information as a means for

verifying the information in the letter diminishes its reliability. In addition, the letter does not specify the petitioner's duties and responsibilities as a Deputy President. In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment. The petitioner did not provide an organizational chart or other similar evidence to establish where her role as a Deputy President fit within the overall hierarchy of the association. The submitted evidence fails to demonstrate that the petitioner's specific duties and responsibilities as Deputy President were commensurate with performing in a leading role, and does not establish that she contributed to the association in a way that was significant to its success or standing. Furthermore, there is no documentary evidence showing that the [REDACTED] has a distinguished reputation.

The petitioner also submitted a certificate stating that she is a "Council Member" of the [REDACTED]. In addition, the petitioner submitted a document listing their criteria for membership, but there is no evidence showing that her role as a Council Member was leading or critical. Furthermore, there is no documentary evidence demonstrating that the [REDACTED] have a distinguished reputation.

In light of the above, the petitioner has not established that she meets this regulatory 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. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the director's determination on this issue will be withdrawn. Again, the AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petitioner submitted a January 2014 "Certificate of Job Description" from [REDACTED] stating that "she receives an annual income of 2,756,523.28 yuan (RMB), which is about twice the national average in China." In addition, the petitioner submitted what appears to a spreadsheet listing the year as 2012, the petitioner's name, specialty, position, and monthly salary and bonus amounts totaling 2,756,523.28 yuan for the year. The source of the preceding document, however, was not identified. The petitioner failed to submit reliable documentary evidence (such as income tax forms) of her earnings to demonstrate her 2012 or 2013 salary in China.

The petitioner also submitted wage information from [REDACTED] stating that the average monthly salary for "China Architecture Design & Research" employees is "12,830 yuan" per month or 153,960 yuan annually. The petitioner's reliance on average salary data for "Architecture Design & Research" employees is not a proper basis for comparison. First, the petitioner must submit

evidence showing that she has earned a high salary or other significantly high remuneration relative to others in the field, not just a salary that is above average in her field. Furthermore, as the "Certificate of Job Description" from [REDACTED] states that the petitioner is the company's chairperson and senior engineer, the preceding salary information for "Architecture Design & Research" employees does not represent an appropriate basis for comparison in demonstrating that her salary was high in relation to others in the field. The petitioner did not submit any documentary evidence comparing her salary to that of other construction company owners or senior engineering professionals with similar job responsibilities.

The petitioner must present evidence of objective earnings data showing that she has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *see also Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). The petitioner, however, offers no reliable basis for comparison showing that she has received a high salary or significantly high remuneration relative to others in her field who perform similar work.

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

#### *Summary*

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

#### ***B. Final Merits Determination***

As the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence, a final merits determination is unnecessary. However, because the director found that the petitioner had met at least three categories of evidence, we will conduct a final merits determination that considers 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," 8 C.F.R. § 204.5(h)(2); 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

Although the director determined that the petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (viii), and (ix), he concluded that the submitted documentation failed to demonstrate the petitioner's sustained national or international acclaim at the very top of the field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the petitioner has not established that her employment “as a bid appraisal expert of Liaoning Province” involved her participation as a judge of the work of others in the same or allied field of specialization. Furthermore, there is no evidence demonstrating that conducting bid appraisals for the “Office for Comprehensive Management of Bid Appraisal Experts of Liaoning Province” and performing human resources functions for [REDACTED] were indicative of national acclaim in the civil engineering field. The submitted documentation does not establish that the petitioner’s level of judging was commensurate with sustained national or international acclaim at the very top of the field.

Regarding the category of evidence at 8 C.F.R. § 204.5(h)(vi), the petitioner has documented her authorship of various journal articles and, therefore, we determined that she has met the plain language requirements of this regulatory criterion. The petitioner, however, has not established that her publication record is indicative of sustained national or international acclaim at the very top of the civil engineering field. The petitioner’s citation history is a relevant consideration as to whether the evidence is indicative of the petitioner’s recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Without documentation differentiating the petitioner’s articles from those of other civil engineering researchers (such as citation evidence showing that her articles are widely cited by others in field), the petitioner has not demonstrated that her published work has attracted a level of interest in the field commensurate with sustained national or international acclaim at the very top of the field.

In regard to the category of evidence at 8 C.F.R. § 204.5(h)(viii), as previously discussed, the petitioner has not established that she has performed in a leading or critical role for distinguished organizations or establishments. Moreover, although the petitioner incorporated [REDACTED] in New York in March 2013, there is no documentary evidence showing that the petitioner has garnered any sustained national or international acclaim in the United States based on her leadership role and the reputation of that company. The petitioner has not established that her company roles, association position, and council membership were indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who has risen to the very top of her field.

With respect to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner has not submitted reliable evidence of her earnings or established that she has earned a high salary in relation to others in the field performing similar work. The petitioner has not demonstrated that her salary places her among that small percentage who has risen to the very top of the field of endeavor. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x at 713-14; *see also Muni v. INS*, 891 F. Supp. at 444-45; *Grimson v. INS*, 934 F. Supp. at 968; *Matter of Price*, 20 I&N Dec. at 954. The submitted salary evidence is not commensurate with sustained national or international acclaim.

Regarding the remaining categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (v), the deficiencies in the documentation submitted for those categories have already been addressed. The petitioner has not established that she meets the plain language requirements of those categories, or

that the evidence she submitted is indicative of, or consistent with, sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of the field. Although the petitioner claims various prizes and awards, she has not submitted evidence showing that the honors she received are nationally or internationally recognized prizes or awards for excellence in the field of civil engineering. Furthermore, the published material she submitted did not identify the author, was not about the petitioner, and was not shown to have been in major trade publications or other major media. Lastly, with respect to the petitioner's claimed contributions, there is no documentary evidence showing that they were of major significance in the field of civil engineering.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought; however, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a civil engineer and business owner, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

### III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the individual 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.

Review of the record, however, does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, 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.