



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 01 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]
BENEFICIARY: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 May 6, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on June 6, 2014. The appeal will be dismissed.

According to the petition and accompanying documents the petitioner filed on September 26, 2013, the petitioner seeks classification as an alien of extraordinary ability as an engineering researcher in the field of traffic operations and roadway safety, 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 did not establish her 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, as initial evidence, can present 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 submits an appellate statement without any additional supporting evidence. The petitioner asserts that the director erred in concluding she did not meet the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). The petitioner does not specifically challenge the director's adverse final merits determination. For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not met at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3) with relevant, probative evidence, and in the final merits determination, she has not demonstrated that she is one of the small percentage who are at the very top of the field and has not demonstrated her sustained national or international acclaim. See 8 C.F.R. § 204.5(h) (2), (3). Accordingly, we 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 initial 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 our decision to deny the petition, the court took issue with our 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 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 the AAO did)," and if the petitioner did not 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 she is one of the small percentage who are at the very top in the field of endeavor, or that she has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

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

ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, 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).

Based on the petitioner's receipt of the [REDACTED] the director concluded that the petitioner met this criterion. The evidence in the record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The petitioner has submitted evidence showing she received a number of awards, including the 2011 [REDACTED] from the [REDACTED] of the [REDACTED]. The petitioner has not submitted sufficient evidence showing that this award constitutes a lesser nationally or internationally recognized prize or award for excellence in the field of traffic operations and roadway safety. The prestige of the [REDACTED] alone is insufficient; at issue is whether the award itself is nationally or internationally recognized within the field.

According to [REDACTED] Ph.D., P.E., Senior Research Engineer, the petitioner was involved in the [REDACTED] project and the paper from the project "received appreciation nationwide and won the prestigious [REDACTED] award." Similarly, [REDACTED], Ph.D., Director of Research, [REDACTED] states that the [REDACTED] is a "prestigious" award. Dr. [REDACTED] Dr. [REDACTED] and the petitioner, are coauthors of the article "[REDACTED]" that won the [REDACTED].

In response to the director's request for evidence (RFE), the petitioner submitted materials from the [REDACTED] website and a January 2014 letter from [REDACTED] Director of the Technical Activities Division, [REDACTED] stating that the [REDACTED] "is given annually to the outstanding paper published in the [REDACTED] in the field of operation, safety, and maintenance of transportation facilities." Mr. [REDACTED]

² The petitioner does not claim that she has satisfied the regulatory categories of evidence not discussed in this decision.

further states that “[r]esearchers/paper authors from across the world and all experience levels are considered for this award. After multiple rounds of peer-reviews, one paper is selected for this award.” The primary evidence submitted to show the recognition of the petitioner’s award is from individuals who received the award and from the entity that issued the award. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff’d*, 317 F. App’x 680 (9th Cir. 2009) (concluding that we did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

Although the petitioner has also submitted other evidence relating to the reputation and prestige of the award, the remaining evidence does not establish that the award is a qualifying award under the criterion. [REDACTED] Ph.D., P. Eng., Associate Professor and [REDACTED] states that the [REDACTED] is “prestigious,” but does not provide specific information establishing his conclusion that the award is prestigious. 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 submitted a 2012 article from [REDACTED] published by the [REDACTED] stating that the petitioner, Dr. [REDACTED] and Dr. [REDACTED] won the [REDACTED] for their “work on crosswalk markings that is influencing national policy decisions.” The institution that employs the authors of the article who won the award published this notice. The article does not provide details on the national policy decisions that the article has influenced. The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the 2011 award in professional or nationally circulated publications.

Moreover, the information provided in Mr. [REDACTED] letter is not indicative that the [REDACTED] is a qualifying award under the criterion. Although Mr. [REDACTED] states that “[r]esearchers/paper authors from across the world and all experience levels are considered for this award,” he does not provide information relating to approximately how many papers the [REDACTED] considers for the award annually, or the selection criteria for the award. As such, the petitioner has submitted insufficient evidence showing that the [REDACTED] is a qualifying award under the criterion.

In the alternative, even assuming the petitioner had established that the [REDACTED] is qualifying, the petitioner has not met this criterion. The plain language of the criterion requires evidence of nationally or internationally recognized prizes or awards, in the plural, for excellence in the field of endeavor. This requirement is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the [REDACTED] is qualifying under this criterion, the record lacks evidence showing that the petitioner has received another qualifying award.

The petitioner has submitted evidence showing that she has received other awards, including a [REDACTED] from the [REDACTED] and [REDACTED] academic awards. The petitioner has not submitted sufficient evidence relating to the nomination and selection process and criteria for these awards, evidence relating to the reputation or prestige of the [REDACTED]

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NON-PRECEDENT DECISION

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awards or the organizations that issued the awards, or evidence showing that the awards are for excellence in the field of traffic operations and roadway safety.

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

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 that the petitioner met this criterion. The evidence in the record supports the director's finding. Specifically, according to [REDACTED] Assistant Professor of Civil and Environmental Engineering, [REDACTED] the petitioner is "a regular technical paper reviewer for [the [REDACTED] Operational Effects of Geometrics Committee] and other [REDACTED] committees" and "was invited to be one of the reviewers for a special session on the [REDACTED]" Dr. [REDACTED] states that the petitioner "has been a technical paper reviewer for the [REDACTED] since 2009; reviewing about 10 technical papers every year." According to a January 2014 letter from [REDACTED] P.E., Engineer of Traffic and Operations, Senior Program Officer, [REDACTED] the petitioner has reviewed a total of 20 submitted papers for their technical correctness and originality for the [REDACTED] publication [REDACTED] Accordingly, the petitioner has submitted evidence of her participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has met 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).

On appeal, the petitioner asserts that she meets this criterion. As supporting evidence, the petitioner points to a January 2014 letter from Dr. [REDACTED] the petitioner's research projects, her published scholarly articles and other scientists' comments about her projects and articles. The evidence does not support the petitioner's assertions.

First, the petitioner's research completed in collaboration with Dr. [REDACTED] and Dr. [REDACTED] does not meet this criterion, because the petitioner has not submitted sufficient evidence showing that the impact of her research constitutes original contributions of major significance in the field, such that it fundamentally advanced or changed the field as a whole. The petitioner has submitted two letters from Dr. [REDACTED] who has collaborated with the petitioner on projects the petitioner claims constitute qualifying contributions. According to Dr. [REDACTED] first letter, as a graduate research assistant, the petitioner worked on a [REDACTED] project, which "resulted in changes to the traffic sign standards and regulations for the state of Texas." In addition, the petitioner has worked on three additional projects with Dr. [REDACTED] First, the petitioner worked on a [REDACTED] sponsored project "Crosswalk Marking Field Study." The petitioner's "findings on driver preference

of crosswalk markings were critical to the study and widely used by practitioners nationwide.” Second, the petitioner was involved in a [REDACTED] funded project and wrote papers on this project that “were selected for presentation at the [REDACTED] January 2013 through a rigorous and competitive peer review process.” Third, the petitioner was involved in the [REDACTED] project “Driver Workload at Higher Speeds.” According to Dr. [REDACTED] “Methodology and findings from this study were presented at the [REDACTED] meeting at Washington, D.C in January 2012. This work contributed to the decision to raise the speed limit in the state of Texas.” The petitioner has presented email correspondence with the [REDACTED] verifying her invitation to participate and present at its annual meetings.

Although Dr. [REDACTED] first letter, dated September 26, 2013, states that the petitioner has been involved in projects that have had some impact in the field of traffic operations and roadway safety through implementation in Texas, the letter does not indicate that the impact is indicative of original contributions of major significance in the field, such that these projects fundamentally advanced or changed the field as a whole. At best, the letter establishes (1) that the petitioner’s research has value to her government clients who commissioned the projects on which she worked and (2) that conference organizers have found her research worth disseminating. According to the Department of Labor’s Occupational Outlook Handbook (OOH), <http://www.bls.gov/ooh/architecture-and-engineering/civil-engineers.htm#tab-2>, “*Transportation engineers* plan, design, operate, and maintain everyday systems, such as streets and highways, but they also plan larger projects, such as airports, ports, mass transit systems, and harbors.” (Emphasis in original.) Commissioned designs and design standard recommendations are inherent to the occupation of transportation engineers and are not necessarily contributions of major significance in the field of transportation engineering. Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact in the field as a whole, beyond one’s employer and clients or customers. *See Visinscaia v. Beers*, __ F. Supp. 2d __, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Moreover, any research must be original and likely to present some benefit if it is accepted for publication or receives attention from the engineering 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 general knowledge. Evidence that the petitioner has performed original research that added to the general pool of knowledge is insufficient to meet this criterion.

Dr. [REDACTED] states in her first letter that a set of research projects that included “[REDACTED] [REDACTED] has “resulted in changes to the Federal Manual on Uniform Traffic Control Devices which sets the standards for roadway markings and signs nationwide.” Dr. [REDACTED] does not specify the types of changes that were made in the Federal Manual on Uniform Traffic Control Devices or provide evidence that the changes constituted original contributions of major significance in the field as a whole. The petitioner did not provide copies of pages of the manual that credit her with any of the information in the manual or cite her work.

In her second letter, dated January 3, 2014, Dr. [REDACTED] states that the petitioner “is the rare traffic engineer who always thinks about all drivers, young and old, slow and fast, when designing roadways.” At issue is not the strength of the petitioner’s approach to research. Rather, at issue is the

impact that the petitioner's research has had in the field as a whole. Dr. [REDACTED] reiterates that the petitioner's "research work has resulted in changes to the traffic sign standards and regulations for Texas and Federal Manual on Uniform Traffic Control Devices" and that the petitioner work has provided "key information" and "key insights" on areas relating to crosswalk markings, roadway signs, driver lane change behaviors and driver behavior on highways. According to Dr. [REDACTED] who also collaborated with the petitioner and Dr. [REDACTED] in the crosswalk marking project, the petitioner's papers "made a significant contribution to the current state of knowledge on the relative visibility of different crosswalk marking patterns" and that the petitioner's work "is a significant breakthrough as it provides guidance for practicing traffic engineers to make informed design decisions regarding crosswalk markings." Dr. [REDACTED] states that the petitioner's work on driver comprehension of signing and marking practices for complex interchanges "provides significant guidance for designers and practicing traffic engineers to make informed design decisions," but provides no examples of designers who have relied on that guidance. The letters from Dr. [REDACTED] and Dr. [REDACTED] indicate that the petitioner's research and paper have contributed to certain limited aspects of the field of traffic operations and roadway safety, including crosswalk marking, roadways signs and driver behavior, but they are insufficient to show that the petitioner's work has had an impact consistent with contributions of major significance in the field, such that the petitioner's work fundamentally changed or affected the field as a whole. The petitioner has not provided sufficient evidence showing that there has been wide acceptance and adoption, beyond a limited regional area, of the guidelines she proposed in her research.

Second, the evidence in the record relating to the petitioner's research completed in collaboration with [REDACTED], Ph.D., P.E., Senior Research Engineer, [REDACTED] does not meet this criterion. Dr. [REDACTED] has submitted two letters in support of the petition. According to Dr. [REDACTED] who collaborated with the petitioner in the [REDACTED] " [REDACTED] " project that studied the use of concrete barriers in work zones, the petitioner was a lead researcher on the project. The project "identified a method for DOTs [departments of transportation] to become compliant with 2008 rulemaking pertaining to work zone traffic control." In Dr. [REDACTED] second letter, he states that the petitioner's paper " [REDACTED] of which Dr. [REDACTED] is a coauthor, is "of major significance as it provides guidance for designers and practicing traffic engineers across the nation for design of efficient and safe work zones." According to Dr. [REDACTED] guidance developed through the petitioner's " [REDACTED] " "helps state transportation agencies in becoming compliant with the Federal Highway Administration's 2008 rulemaking pertaining to work zone traffic control" and "this guidance is an indispensable tool for transportation engineers across the nation in designing efficient and safe work zones." The evidence shows that the [REDACTED] has relied on the petitioner's work on issues involving placing barriers in work zones. Dr. [REDACTED] states that the [REDACTED] Department has shown interest in sponsoring a similar barrier in work zone projects. The evidence shows that the petitioner's work has value in the field and has been implemented and adopted in a limited geographic area. It does not, however, show that her work has impacted the field as a whole. In addition, although the petitioner's research in the area of barriers in work zones has provided "guidance" to working and practicing engineers and scientists in the field, the petitioner has not shown

that her “guidance” has been widely accepted and/or implemented in the field beyond the state agency for which she performed the study and, potentially, one other state.

The petitioner has submitted an email from the [REDACTED] verifying the [REDACTED] invitation for her to participate in the [REDACTED] in January 2012 as a presenter of “[REDACTED]”. The petitioner has also submitted evidence an invitation for her to present her work at the [REDACTED] of India. Being invited to be a presenter at a conference shows that the scientific community considers the petitioner’s work to have value. At issue is the impact of the petitioner’s work in the field of traffic operations and roadway safety after the dissemination of her research findings. The record lacks evidence that the petitioner’s work in the area of placing barriers in work zones has been widely adopted in departments of transportation in any country after the [REDACTED] meeting or the conference in India. In her appellate statement, the petitioner quoted two engineers, one states that the petitioner’s paper “might assist him in answering questions” and the other states that he appreciated the petitioner’s work and presentation. The petitioner also points to a [REDACTED] online printout relating to comments individuals made about the petitioner’s study. This evidence, at best, shows a handful of scientists have taken notice of the petitioner’s work. It does not establish an impact in the field of traffic operations and roadway safety as a whole.

Third, the petitioner’s work involving sign retroreflectivity and tribal area vehicle crash issues does not establish she meets this criterion. According to [REDACTED] Safety Discipline Champion for the [REDACTED] the petitioner’s work on sign retroreflectivity in tribal communities resulted in a presentation “at the [REDACTED] in Washington, DC in January 2013, which was highly appreciated by many tribal representatives present.” Mr. [REDACTED] also states that the petitioner’s work “provided a synthesis of available research reports and fact sheets on the topic [of tribal motor vehicle crash trends and causative factors] and summarized the current and research status of transportation safety in tribal communities, along with gaps in available data and research needs to further understand and address tribal transportation safety issues.” The petitioner has submitted insufficient evidence showing that her work relating to sign retroreflectivity and tribal area vehicle crash issues has impacted the field as a whole. At best, the evidence shows that the petitioner’s work was appreciated by individuals and tribal communities associated with the studies. To meet this criterion, the petitioner must show impact in the field as a whole, beyond those who sponsored or are associated with the study. *See Visinscaia*, 2013 WL 6571822, at *6.

Fourth, the evidence that shows the petitioner’s research has added to the general pool of knowledge in the field and her research findings have been adopted and implemented in a limited geographical region is insufficient to meet this criterion. The level of impact of the petitioner’s work is not consistent with contributions of major significance in the field, as required under the criterion. Dr. [REDACTED] indicates that the petitioner has contributed to the general pool of knowledge, stating that the petitioner’s Master’s thesis “provided an understanding of the factors affecting the safety performance of exclusive truck facilities” [REDACTED] P.E., Research Project Manager, [REDACTED] indicates that the petitioner’s impact is limited to Texas. Mr. [REDACTED] states that the petitioner’s work relating to guidance on work zone conditions and positive protection devices that “is currently being incorporated into work zone standards for use on roadway construction projects in Texas” and that the petitioner

“identified characteristics of pedestrian crashes in Texas and identified potential safety treatments or combinations of treatments that would reduce pedestrian fatalities and injuries.” Mr. [REDACTED] also states that the petitioner has conducted a research project that “led to the development of a reliable speed prediction model,” which “is particularly crucial in the design of roadway facilities with proposed operating speeds of 75 miles per hour and greater.” Mr. [REDACTED] however, does not specify which or how many scientists in the field have used or relied on the petitioner’s prediction model. A description of the petitioner’s work without evidence also showing the work’s impact in the field as a whole is not sufficient to meet this criterion. *See Visinscaia*, 2013 WL 6571822, at *6.

Fifth, the petitioner has submitted reference letters stating that she has the potential to make contributions in the field. Evidence of potential contributions is not sufficient to meet this criterion, which requires contributions already at existence at the time the petitioner filed her petition. According to Dr. [REDACTED] the petitioner “will be an asset to the academic community in the United States.” According to Dr. [REDACTED] the petitioner “is a key researcher on [a] . . . project that will provide critical information on safety impacts of various work zone design decisions and guidance on potential crash countermeasures.” According to [REDACTED] B.E. (civil), M.E., Ph.D., Associate Professor, [REDACTED] in India, he “could see that [the petitioner’s] work had the potential to add value to [his] own work in India” and he worked with the petitioner on a proposal for projects that ultimately did not receive funding. Dr. [REDACTED] states that the petitioner “will prove to be an asset to this country.” Dr. [REDACTED] states that the “benefit-cost implementation guidance on positive protection use and other traffic control strategies, developed through this study will help decrease the likelihood of highway work zone fatalities and injuries to workers and road users.” Mr. [REDACTED] asserts that the petitioner’s work on traffic safety issues in tribal communities “will help stakeholders in establishing a baseline for their efforts towards tribal transportation safety.” Research studies that have the potential to be contributions of major significance, however, are not sufficient to meet this criterion. The petitioner must establish an impact in the field as a whole through evidence such as wide acceptance and adoption of her guidelines and research findings.

Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field as a whole are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d at 1115.³ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron 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 above, 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

³ In 2010, the *Kazarian* court reiterated that our conclusion that “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.

any way questionable. *Id.* 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)); *Visinscaia*, 2013 WL 6571822, at *6 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Accordingly, the petitioner has not submitted sufficient evidence showing that she has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 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 that the petitioner met this criterion. The evidence of record, including the petitioner's authorship of articles published in the *Transportation Research Record*, supports the director's determination. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

B. Final Merits Determination

On appeal, the petitioner does not specifically challenge the director's adverse final merits determination. Instead, the petitioner only challenges the director's finding that she did not meet the contributions criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). Accordingly, we dismiss the appeal, as the petitioner did not timely challenge the adverse final merits determination, which is the sole basis of the director's denial of the petition. *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).

Even if the petitioner did not abandon this issue, the petitioner has not submitted the requisite evidence under at least three evidentiary categories. Although the petitioner has submitted sufficient evidence regarding her participation as a judge under the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and her scholarly articles under the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the petitioner meets no other criterion. Notwithstanding this finding, in accordance with the *Kazarian* opinion, given that the director's sole basis of denial was a final merits determination, we will also conduct 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 [she] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that she "has sustained national or international acclaim and that [] 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)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, we dismiss her appeal.

The petitioner received her Master of Science (MS) degree in civil engineering in 2007 and, according to a December 16, 2013 letter from [REDACTED] Senior Human Resources Manager at [REDACTED]

was employed as an Assistant Research Engineer in the Roadway Design Program of the Transportation Operations Group at [REDACTED]. The evidence shows that during her years as a student and after she received her MS degree, she worked on a number of projects in Texas relating to certain aspects of the larger field of traffic operations and roadway safety, including crosswalk marking, road signs and driver behavior. She has authored a handful of scholarly articles that are published in [REDACTED] and presented her work at conferences. The petitioner has provided a document indicating that her articles have garnered a few citations since their publication. The [REDACTED] awarded one of the petitioner's articles the [REDACTED]. For the reasons discussed below, these achievements, while consistent with a skilled and successful engineering researcher in the field of traffic operations and roadway safety, are insufficient to establish national or international acclaim and do not place her within that small percentage at the top of the field.

With regard to the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), as discussed above, the petitioner has not met this criterion. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. Specifically, the evidence in the record is insufficient to show the petitioner's [REDACTED] is a qualifying award under the criterion. In addition, the petitioner has not submitted evidence of her receipt of qualifying prizes or awards, in the plural, as required by the plain language of the criterion. Furthermore, the record includes insufficient information on the impact of the article that received the award, as the petitioner has provided information that the article has been cited merely a handful of times.

With regard to the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), although the petitioner meets this criterion, she has not shown that this evidence is indicative of national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of national or international acclaim. See *Kazarian*, 596 F.3d at 1122. The evidence, including the petitioner's curriculum vitae, shows that the petitioner has been a reviewer for one publication, [REDACTED]. According to Mr. [REDACTED] "has a stringent selection process for its referees. [The petitioner] has been chosen to be a reviewer because of her superior expertise in the area of traffic control, visibility, pedestrian, and roadway geometric design." The petitioner has not submitted detailed information relating to how one becomes a reviewer for [REDACTED] or how selective the publication is when choosing its reviewers. The record also lacks information relating to how many other scientists have been invited to serve as reviewers for the publication, such that her invitation is indicative of her national or international claim.

In addition, the petitioner's review experience does not match that of some of her references. According to Dr. [REDACTED] he has been "an active reviewer for more than 15 internationally recognized journals, including [REDACTED] just to name a few." Moreover, he has served as a reviewer of proposals for prestigious organizations, including the [REDACTED]

He also served on the special Task Force to review the Highway Safety Manual. In comparison, the petitioner has served as a reviewer for one publication.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The solicited letters from the petitioner's colleagues do not demonstrate that the petitioner has already made contributions of major significance in the field of traffic operations and roadway safety. Although the evidence shows that the petitioner's work has been accepted and adopted in a limited regional area commensurate with a competent transportation engineer working on commissioned projects, the evidence does not establish that her work's impact in the field as a whole is significant, such that it fundamentally advanced or changed the field as a whole.

In addition, even if the petitioner has met this criterion, she has not shown her sustained national or international acclaim in the field. The petitioner's articles have garnered minimal citation from other scientists and the record lacks evidence that her findings and conclusions have received wide acceptance or adoption in the field. Many of her references indicate that her work has provided guidance to working and practicing traffic engineers in the field, but the record lacks evidence relating to how many working and practicing traffic engineers have relied on her guidance or evidence showing that there is general consensus among working and practicing traffic engineers of the value and applicability of the petitioner's work. Ultimately, the evidence of contributions is not indicative of the petitioner's national or international acclaim or status at the top of the field. At most, the petitioner has shown that her work has contributed to the general pool of knowledge in the field and has been accepted and adopted in a limited geographic area, primarily the state that commissioned the studies on which she worked.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), as discussed above, the petitioner has presented evidence of her papers being published in the and she has presented her work at conferences. According to Dr. "[p]apers are selected for presentation through a rigorous peer review process resulting in roughly 40% of papers submitted being accepted for presentation, then a second review process results in 25% of presented papers being selected for publication." Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, the field's response to these articles may be considered in a final merits determination. The petitioner has submitted a document noting that her articles have received minimal citations from other scientists. This citation frequency is not indicative of a significant impact of the petitioner's articles upon dissemination. For example, Dr. indicates that he has authored more than 120 articles and that his work has garnered more than 2,700 citations, indicating that the petitioner's publication record is not indicative of national or international acclaim or status among the small percentage at the very top of the field. The small number of articles and minimal citation of the petitioner's work is not indicative of a publication history consistent with national or international acclaim.

Ultimately, the record does not support the petitioner's claim that she is an alien of extraordinary ability in the field of traffic operations and roadway safety. Even considered in the aggregate, the

evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. In support of the petition, the petitioner, an assistant research engineer, has provided evidence relating to her receipt of a [REDACTED] involvement in projects that have received attention from the field and regional adoption, participation as a reviewer for a professional publication, participation in [REDACTED] committees and her limited publication record that has garnered minimal citations. This evidence is insufficient to show that the petitioner is at the very top of her field.

II. 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.

A review of the evidence in the aggregate 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 or 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 her 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.