



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

SEP 08 2014

Office: TEXAS SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 8, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on January 30, 2014. The appeal will be dismissed.

According to the petition, filed on May 22, 2013, the petitioner seeks classification as an alien of extraordinary ability in the sciences, as an organic chemistry 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, 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 files additional supporting documents, including evidence relating to his articles and research work. The petitioner asserts that the director correctly concluded that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), but erred in concluding that he does not meet the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). 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 organic chemistry, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we 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 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 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 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).

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, 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 his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. On appeal, the petitioner acknowledges that the director “correctly noted that the evidence does not show that [the petitioner] has received a major, internationally recognized prize or award.” 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.

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 meets this criterion. The record includes evidence of the petitioner serving as a reviewer of manuscripts submitted to professional publications, including

Accordingly, the petitioner has presented evidence of his 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 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 that the petitioner does not meet this criterion. On appeal, the petitioner asserts that he meets this criterion, based on (1) his articles published in scientific journals; (2) citations to and reviews of his articles; and (3) reference letters from scientists from different geographic locations, some of whom have cited to his articles or relied on his research in their own research studies.

The evidence in the record indicates that the petitioner is a postdoctoral research scientist, who has published articles in professional publications in the field of organic chemistry. These articles have garnered minimal to moderate citations. The petitioner has conducted collaborative research with

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

other scientists, including some of those who have submitted letters of reference in support of the petition. Some scientists in the field of organic chemistry have relied on the petitioner's research in their own research, and they have submitted letters of reference in support of the petition. Although the evidence shows that the petitioner's research has received attention from some scientists in the field, it is insufficient to show that his research has reached a level of impact that is equivalent to "contributions of major significance in the field," as required under the criterion.

First, publication of the petitioner's articles is insufficient to show he meets this criterion. 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 authorship of scholarly articles. Publication of articles is not sufficient evidence under this criterion absent evidence that the articles are of "major significance" in the field of organic chemistry. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In its second *Kazarian* decision, the court reaffirmed its holding that our 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, for the reasons discussed below, 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 of organic chemistry.

Specifically, the prestige of a journal, without more, is not indicative of the impact of all articles published in the journal. On appeal, the petitioner submits [REDACTED] online printouts entitled [REDACTED] and [REDACTED]. [REDACTED] rank the publications according to their "h5-index" and "hi-median." At most, these metrics demonstrate the influence and impact of the publications. They do not address the influence or impact of each article published in these publications. Similarly, the documents that the petitioner submits on appeal, including the [REDACTED] printouts entitled [REDACTED] printouts relating to the publications' impact factors, are insufficient to show the influence and impact of the petitioner's articles. Rather, the online printouts relate to the journals that have published the petitioner's articles and many other scientists' articles. The fact that the petitioner's articles were published in these journals does not establish that his articles constitute contributions of major significance in the field of organic chemistry, absent evidence of the articles' influence and impact in the field.

In addition, the citations to the petitioner's articles are insufficient to show he meets this criterion. The petitioner has filed a [REDACTED] online printout showing that four of his articles were minimally cited and four of his other articles were moderately cited. The petitioner has not submitted sufficient evidence showing that his moderately cited articles, published in 2002 and in 2011, have impacted or advanced the field of organic chemistry significantly such that they

constitute contributions of major significance in the field. The record lacks sufficient evidence showing that moderate citation in the petitioner's field is indicative of major significance. According to a [REDACTED] online printout, entitled [REDACTED] in the field of chemistry, the average citation per paper published in 2011 is 4.44.³ This document provides information relating to the field of chemistry. It does not, however, provide information relating to the petitioner's field, which is organic chemistry. Although the field of chemistry might include organic chemistry, the petitioner must provide evidence specific to the impact and influence of his articles in his field of organic chemistry. Moreover, although the petitioner's 2011 articles were cited more frequently than the average 2011 article published in the broader field of chemistry, the petitioner has not shown that moderate citation, even if above the average number of citations, is indicative of contributions of major significance in the field of chemistry or organic chemistry. Notably, the petitioner submitted lists of articles that cite his work and that result from a search of terms related to his area of research. One list includes a 2011 article, [REDACTED] solution," that has garnered more than twice as many citations as any one of the petitioner's articles. Similarly, a 2005 article entitled [REDACTED] has garnered 108 citations, a 2007 article entitled "[REDACTED]" has garnered 135 citations, a 2008 article entitled [REDACTED] has garnered 186 cites, and a 2004 article entitled "[REDACTED]" has garnered 323 citations.

In response to the director's request for evidence (RFE) and on appeal, the petitioner files a July 22, [REDACTED] online printout entitled [REDACTED]. It provides the top one and ten percent citation rates in the field of chemistry, for papers published in 2011. Again, this document does not provide information relating to articles published in the field of organic chemistry, which is the field in which the petitioner claims extraordinary ability. Moreover, at best this evidence shows that as compared to other papers published in 2011 in the broader field of chemistry, two of the petitioner's articles fall between the top one percent and 10 percent of citation frequency. According to the same online printout, however, the top one percent of articles published between 2003 and 2013 received at least 108 citations, which is a citation frequency well above the petitioner's articles. While articles published prior to 2011 have had a longer period in which to accrue citations, at best the petitioner's 2011 article, at the time of filing, had not had time to garner the type of widespread frequent citation more consistent with a contribution of major significance. The petitioner has not established that every article moderately cited in the first few years has gone on to be widely and frequently cited.

In response to the RFE and on appeal, the petitioner also files updated [REDACTED] online printouts, which provide updates on the number of citations the petitioner's articles garnered. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of

³ The petitioner has not submitted information relating to the average citation per paper for articles published in 2002.

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 cannot secure a priority date based on the anticipation of future citations at a level consistent with contributions of major significance. 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) (adopting *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.") Both [REDACTED] online printouts postdate May 2013, when the petitioner filed his petition. As such, they do not establish the impact or influence of the petitioner's articles, or establish that the articles constituted contributions of major significance in the field, at the time the petitioner filed the petition in May 2013.

Furthermore, the petitioner's online printouts showing Google search results when one searches the phrases [REDACTED] are not sufficient to show his contributions in the field of organic chemistry. As stated above, these lists include articles by other authors that have garnered substantially more citations than the petitioner's articles.

Second, the petitioner has submitted supporting documents, including reference letters from scientists. Some of the reference letters indicate that scientists from different geographic locations have cited to the petitioner's articles and some have relied on his research in their own research. While these documents establish that the petitioner's research has value, any research must be original and likely to present some benefit if it is to receive attention from the scientific community. The evidence in the record demonstrates that the petitioner has performed original research that added to the general pool of knowledge in the field of organic chemistry. [REDACTED] Professor of Chemistry, [REDACTED] states that in the petitioner's "innovation [] allows for the study of protease kinetics without labeling – a vast improvement over past assays." While Dr. [REDACTED] confirms that he has cited the petitioner's work, he does not indicate whether it was as background information or as the foundation of his own work.

[REDACTED] Ph.D., Professor of Chemistry, [REDACTED] states that the "knowledge [the petitioner] has obtained through his research has greatly increased understanding of the study of [cucurbituril] supramolecules, and it poses new possibilities for biomedical and pharmaceutical chemistry." Dr. [REDACTED] further concludes that the applications the petitioner advanced "related to the use of tandem assays to monitor proteolytic activity have significant implications for drug design as well as for medical diagnostics, where proteases are important biomarkers of disease." While Dr. [REDACTED] explains the importance of the petitioner's area of research, he does not explain how the petitioner has already impacted that area, or that the impact constituted contributions of major significance in the field of organic chemistry as a whole.

According to [REDACTED] Professor, [REDACTED] the petitioner's research on squaramides "is very important to the study of anion sensing and in the study of organocatalysis" and "makes great strides toward the design of a drug for [the] disease [cystic fibrosis]." [REDACTED]

[REDACTED] Ph.D., Assistant Professor, [REDACTED] Rochester, states that the petitioner's work "leads us to a deeper understanding of protein interactions and their functions" and it "has

directly increased knowledge of the squaramide molecular that has resulted in the ability to stack aromatic groups in a parallel fashion.” While Dr. [REDACTED] affirms that he has relied on the petitioner’s findings in his own work, Dr. [REDACTED] was the petitioner’s doctoral advisor at the [REDACTED] and they coauthored articles together. The fact that the petitioner’s doctoral advisor continues to build on their collaborative research is not necessarily indicative of a contribution of major significance.

[REDACTED] Professor, [REDACTED] Spain, states that the petitioner’s “research has brought fresh insights into organic chemistry and the properties of squaramides.” He further states that he has “relied on [the petitioner’s] study [on the detection of hexadecylphosphocholine with squaramide derivative] to show that squaramide can sense chloride anions” and that he has cited the petitioner’s article in his own article published in [REDACTED] in 2013. He provides in his letter that in the areas of anion sensing and drug delivery, the petitioner “has made notable contributions to science and humanity” and that the petitioner’s work “is destined to bear fruit for the future generation in the forms of drugs designed to be able to penetrate lipid bilayers.” This letter establishes that Dr. [REDACTED] has relied on and cited to the petitioner’s research and that the petitioner’s research has had some degree of influence in the areas of anion sensing and drug delivery. Neither this letter nor any other evidence in the record, however, shows that the petitioner’s research constitutes contributions of major significance in the field of organic chemistry as a whole.

Similarly, although the letter from [REDACTED] Professor of Chemistry, [REDACTED] explains that the petitioner has had some degree of influence in certain areas of the field of organic chemistry, the letter, considered with other evidence in the record, is insufficient to show that the petitioner meets this criterion. According to Dr. [REDACTED] the petitioner has “introduced new concepts and methodologies of benefit to industry and the public.” Dr. [REDACTED] has relied on and cited to the petitioner’s research and affirms that his “research would have been impossible without [the petitioner’s] original publication demonstrating the existence and synthesis of cucurbit[8]uril rotaxane.” Dr. [REDACTED] claims that the petitioner “is widely recognized for [sic] in supramolecular chemistry, which has led to the synthesis of cucurbit[8]uril rotaxanes.” This letter indicates that the petitioner has had a degree of influence in one area of the field of organic chemistry. The petitioner has not shown that his degree of influence on two independent researchers is indicative of his impact in the entire field of organic chemistry.

[REDACTED] Ph.D., Professor of Chemistry, [REDACTED] Japan, states that the petitioner’s study of [certain rotaxanes] is a benefit to anyone in the field of organic chemistry who studies the structure and use of rotaxanes.” He further states that he has “published a paper on rotaxanes . . . for which [the petitioner’s] work was an invaluable resource.” He explains that the petitioner’s “work with rotaxanes is important because it pushes the advancement of research in this area.” Dr. [REDACTED] does not indicate in his letter if he has cited the petitioner’s research as general background information on rotaxanes or specify the extent of his reliance on the petitioner’s research.

The evidence in the record shows that a small number of independent researchers have relied on the petitioner's original research and findings. Not every researcher who performs original research that has had some degree of influence in the field has inherently made a contribution of major significance in the field as a whole. In this case, the petitioner has not submitted sufficient evidence showing contributions of major significance in the field.

Instead, the submitted evidence, including the reference letters, indicates that the petitioner's research has the potential of becoming contributions of major significance in the field. For example, a reviewer of the petitioner 2011 article [REDACTED] noted that the petitioner's research "will be valuable to the community." Dr. [REDACTED] states that the petitioner "will surely facilitate the creation of novel, improved treatments for some of the most disastrous diseases facing our world today, such as cancer." Dr. [REDACTED] states that the petitioner's "research interests have the qualities necessary to aid scientific discoveries in his and other overlapping branches of science such as medicinal chemistry and synthetic organic chemistry." [REDACTED] Professor of Chemistry, [REDACTED] Canada, states that the petitioner's development of a synthetic receptor "opens up many new avenues, as this work will be beneficiary for medical diagnostic uses and in drug delivery systems" [REDACTED] Ph.D., Associate Professor of Chemistry, [REDACTED] states that the petitioner's research has "great economic value because it is of much use for sensing chloride in environmental effluence and in measuring chloride anion concentrations in the paint and dye industries." Dr. [REDACTED] states that "[f]or posterity, [the petitioner's work] is destined to bear fruit for future generations in the form of drugs designed to be able to penetrate lipid bilayers." The evidence in the record, including these reference letters, is insufficient to show that the petitioner has already made qualifying contributions. Rather, some of these letters speculate that the petitioner's research might in the future impact 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).⁴ 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

⁴ In 2010, the *Kazarian* court reiterated that our 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.

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)). While the evidence confirms that the petitioner's work is original and contributes to the pool of knowledge in the field of organic chemistry, the evidence does not establish that his impact in the field has risen to a level consistent with contributions of major significance.

Third, the record includes evidence that the petitioner was one of the listed inventors on a patent application filed in 2003. A patent, however, is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 n.7 (Assoc. Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner has made a contribution of major significance in the field through his development of this idea. Indeed, none of the petitioner's reference letters mentions the patent or provides information on how the innovation has impacted the field of organic chemistry as a whole.

The record also includes evidence that the petitioner presented his work at conferences. The petitioner, however, has not submitted sufficient evidence demonstrating the impact or influence of these presentations upon dissemination in the field of organic chemistry. Without such evidence, at best, the presentation of the petitioner's work demonstrates the scientific community's interest in the petitioner's work. It does not establish that his work constitutes contributions of major significance in the entire field of organic chemistry.

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 organic chemistry. 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 meets this criterion. The petitioner has submitted evidence showing that he has authored a number of scholarly articles that are published in scientific publications, including the

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).

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

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 we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.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.

ORDER: The appeal is dismissed.

⁵ We maintain *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, we maintain 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).