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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 12 2015 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, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences as a computational 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), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief with additional documentary evidence. For the reasons discussed below, we agree that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies 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 she is one of the small percentage who are at the very top in the field of endeavor, and that she 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. LAW

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the alien's sustained acclaim and the recognition of the alien's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

## II. ANALYSIS

### A. Evidentiary Criteria[1]

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

The petitioner did not previously assert that she meets this criterion. On appeal, the petitioner provides a United States Department of Energy (DOE) document labelled Final Report DOE- DOE cleared the document on May 21, 2004. The final page of this document reflects that the petitioner received the As the petitioner did not raise this assertion before the director, the director was justified in not addressing this criterion. Regardless, where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence. There is no primary evidence demonstrating the petitioner received the In this case, while the petitioner submitted the document labelled Final Report, the petitioner does not submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the Final Report is insufficient evidence pursuant to 8 C.F.R. § 103.2(b)(2).

Even if the petitioner had provided primary evidence of the above award, although the issuing entity's name bears the word "International" within its title, the petitioner has not provided evidence to establish that this competition is nationally or internationally recognized. Even if the petitioner were to establish this workshop is nationally or internationally recognized, this level of acknowledgement does not automatically impute such recognition to the petitioner's award that she received at the workshop. A prize or an award does not garner national or international recognition from the event where it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition can occur through specific means; for example, through media coverage. Additionally, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

Consequently, the petitioner has not provided probative evidence that meets the plain language requirements of this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner did not claim to meet this criterion initially, in response to the director's request for evidence or with the initial appellate filing. Subsequently, the petitioner supplemented the appeal, providing a letter from the dated June 3, 2014 confirming the petitioner's visiting Ph.D. student status there in 2001. The petitioner asserts that this letter demonstrates her membership in a qualifying association because ' is one of the best and most prestigious institutions worldwide and has produced Information from the

confirms that "no fewer than have emerged from the ranks" of scientists. As the petitioner did not raise this assertion before the director, the director was justified in not addressing this criterion. Regardless, the June 3, 2014 letter does not affirm that the petitioner was a member of an association that requires outstanding achievements of its members. Rather, it confirms that the petitioner was a visiting Ph.D. student at the and received a scholarship. The petitioner did not demonstrate that the is an association or that its students are "members" of an association, including the Further, the information about scientists within the society, says nothing about the requirements for admittance as a visiting Ph.D. student to the Rather, the information from the that the petitioner submitted indicates that it collaborates with German universities to attract "talented young Ph.D. students." Accordingly, the petitioner has not demonstrated that her time as a student at the is relevant evidence under this 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 discussed the evidence submitted for this criterion and found that the petitioner did not establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned her claims under this criterion. *Sepulveda v. U.S. 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 court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that she actually participated as a judge. 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). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides a letter from Chair of the reflecting that the petitioner served as a judge at the in March Mr. letter indicates that the participants in the were students. The petitioner's initial brief indicates that the "provides an intermediate event between the " The initial brief further asserts that participants "are the first place winners in the physical science competitions in

county Science Fairs in the six surrounding counties." The unsupported assertions contained in a brief do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Mr. does not suggest in his letter that the science fair was limited to the physical sciences or that the petitioner judged projects in her field of computational physics or an allied field. Therefore, the petitioner has not met her burden of establishing that she judged the work of others in her field computational physics or an allied field.

We conduct 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). For the reasons outlined above, a review of the record of proceeding 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 is hereby withdrawn.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

As evidence relating to the criterion, the petitioner relies on reference letters, her published work being made available on the and the selection of her paper as one of the top three publications on The director determined that the petitioner did not meet the requirements of this criterion. Regarding the Department of Energy award, the regulations contain a separate criterion regarding nationally or internationally recognized prizes or awards for excellence. 8 C.F.R. § 204.5(h)(3)(i). We will not presume that evidence relating to or even meeting the awards criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. The Department of Energy award was limited to graduate student poster presentations. The record contains no evidence that the most significant contributions in the field are commonly disseminated as graduate student poster presentations or that selection for an award among such a limited pool of presentations is probative of the petitioner's influence in the field. Therefore, as the record contains no evidence that the Department of Energy award recognized the

impact or influence of the petitioner's work in the field after dissemination, the petitioner's award will not be considered under this criterion, the awards criterion has already been addressed above.

Professor of Physics at explains that he has known the petitioner since he participated in the supervision of her Ph.D. work, which she performed in collaboration with his group. Dr. states the following within the opening paragraph of his July 8, 2013 letter:

> [The petitioner's] groundbreaking research in the field of computational physics, chemistry, materials science, and engineering will have a major impact on our society that will not only enhance the understanding of novel materials but help design them for applications related to energy, nanoscale devices, and medicine, just to mention a few.

Future prospective benefits that the petitioner's findings may have in the field will not qualify her under this criterion. The regulation requires that the petitioner has already made major and significant impacts within her field.

Dr. also indicates within the letter that the petitioner's studies relating to atom manipulation helped uncover the finer mechanisms of existing techniques that are indispensable in nanoscience research. However, Dr. did not describe how the petitioner's discovery of these finer mechanisms impacted the existing techniques of He also indicates that studies such as the petitioner's "contribute directly to one of the most demanding and promising applications in nanoscience." Such vague descriptions of the petitioner's contributions to the field without a specified impact are not sufficient to meet this criterion's requirements. Dr. also describes other projects associated with the petitioner, but did not identify any contributions of major significance she has made in her field. Rather, he focused on the importance of her area of research.

Within Dr. second letter dated December 16, 2013, he states that in his previous letter, he explained why the petitioner's research "has already now had a major impact on our understanding of novel materials and their design for various purposes." While the petitioner's findings may have furthered the knowledge in the field, Dr. does not describe what the impact within the petitioner's field actually is, beyond improving the field's understanding, and how this translates into an original contribution that is of major significance to the field as a whole. Dr. also indicates that the petitioner's work has directly benefitted the however, this assertion is conclusory. Specifically, Dr. asserts that the petitioner worked on computational algorithm development "to train personnel," without explaining the nature of the petitioner's contribution to this work, how the is using the petitioner's work to train personnel, the number of personnel trained using the petitioner's work, or the results of using the petitioner's work to train personnel.

Professor of Physics, at where the petitioner obtained her Ph.D., indicated within his December 2, 2013 letter that the petitioner's computer simulations regarding the behavior and restructuring of metallic surfaces on the atomic scale reproduced virtually the same

features as actual experiments. Dr. states that this, as well as the petitioner's other work, is original and is well cited by the physics community. Regarding whether the petitioner is well cited, USCIS is not required to accept primarily conclusory assertions as factual statements. *1756, Inc. v. Att'y Gen,* 745 F. Supp. 9, 17 (D.D.C. 1990). Dr. also indicates that the petitioner's findings that clusters of atoms move as a group is a revolutionary discovery and that this discovery is of tremendous importance in gaining an understanding of catalytic processes. While this discovery may be original, and while it may assist in understanding metallic surfaces, Dr. has not established that this discovery has sufficiently impacted the petitioner's field in accordance with this regulation's requirements. Neither Dr. nor the petitioner, provides evidence that this greater understanding within the field has made a significant impact.

The petitioner provides evidence that 11 of her works received a minimal to moderate number of citations. While citations demonstrate awareness of the petitioner's work and its value, not every researcher who performs valuable research has inherently made a contribution of major significance in the field as a whole. It remains the petitioner's burden to document the actual impact of her articles. The regulation at 8 C.F.R. § 204.5(h)(3) contains a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If every provision of the regulation is to have meaning, USCIS must presume that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Published material may be relevant to this criterion provided it is relevant and probative of whether or not the research discussed in the material is a contribution of major significance. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

While we take into consideration the citations, it is not persuasive that the moderate citations of the petitioner's articles are reflective of the major significance of her work in the field. The petitioner has not provided probative evidence to establish how the citations of her work by others are indicative of the major significance of her contributions as required by this regulatory criterion. For example, she has not demonstrated that the number of citations is significant or that a notable number of the citing authors placed unusual reliance on the petitioner's work. Notably, the citation results the petitioner submitted include the citation numbers for other articles, including two articles that are contemporaneous with the petitioner's articles but have garnered nine and ten times as many citations in the same period of time, namely '

Within the appellate brief, the petitioner asserts that the director ignored the letter from Dr. a professor at the While Dr. affirms no personal or professional collaboration with the petitioner, the petitioner was a postdoctoral researcher under the supervisor of Dr. at the Regardless, Dr. asserts that his opinion is based on the petitioner's publications and recommendation letters the petitioner provided to him rather than her impact on his own work.

The petitioner submitted the letter from Dr. in response to the RFE. While we agree that the director did not directly discuss Dr. letter, he is not required to specifically name every letter or every piece of evidence that is part of the record, as long as he has factored all the evidence into his decision. The director did note that the petitioner provided several letters of support.

Within the appellate brief, the petitioner points to the portion of Dr. letter in which he mentions that her work relating to the manipulation of atoms "has been very well cited by the scientific community and will always continue to be referenced. This novel piece of work serves as a standard for explaining the physical mechanisms at play during an atomic manipulation process." Dr. does not provide the title of the published work that he claims is very well cited and will always be referenced. Such assertions and general claims are not evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As discussed above, the record contains evidence of two articles by others that have garnered nine and ten times more citations than the petitioner's most cited article during the same period of time. Dr. similarly asserts that the petitioner's results on another project serve "as a standard when designing coatings of metallic surfaces subject to various loads." Dr. does not, however, provide specific examples of independent laboratories using the petitioner's results to design such coatings. In addition, the record does not contain letters from independent laboratories confirming their use of the petitioner's results to design coatings of metallic surfaces.

Dr. also describes multiple other discoveries he attributes to the petitioner and claims that her findings are "invaluable," "an extraordinary contribution," and a "contribution to the scientific world [that] is enormous." Dr. concludes one of the petitioner's contributions "is a national benefit and an end product of extraordinary dimensions." General statements and repetition of the language of the statute or regulations do 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.,* 745 F. Supp. at 15. Further, neither Dr. nor the petitioner provides evidence to corroborate Dr. description of the level of the petitioner's contributions in her field. As an example of her past impact, Dr. states only that "her team members" have successfully used her ideas to come up with "a completely original algorithm for software architecture design for applications used to train personnel." Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F.Supp. 3d at 134-35 (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).

The petitioner's appellate brief also points to the second, undated letter from Assistant Research Professor at the The petitioner submitted this letter in response to the director's RFE. Within this letter, Dr. discusses a project he and the petitioner worked on, in which he indicates that the petitioner's ideas addressed the problems posed within the project.

Dr. also states: "I believe that the architecture and issues discussed in [a published conference proceeding] can serve as a reference for those wishing to construct large-scale, efficiently distributed simulations that are robust to hardware failure." Dr. beliefs that the petitioner's work will result in a future benefit are not sufficient to meet this criterion's requirements, as the contribution in the field must have already been realized. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). This evidence does not establish that, as of the priority date, the petitioner had contributed to her field in a significant manner as required by the regulation.

Within the appellate brief the petitioner summarizes the above letters stating: "These highly regarded professors and researchers acknowledging and writing letter [sic] about her contribution as a major significance by itself is a major evidence [sic] to show petitioner has original scientific contribution is of a major significance in her field." The fact that the petitioner's local colleagues and collaborators consider the petitioner's work useful, however, does not establish her impact in the field as a whole.

The authors of other reference letters describe the petitioner's research and how it contributes to a better understanding of technical aspects of the petitioner's field. However, these letters do not identify the manner in which the petitioner's incremental advancement of the field's knowledge has resulted in any breakthroughs that have already impacted the field, or has resulted in any contributions in her field that are of major significance. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. The reference letters submitted by the petitioner do not provide specific examples of how the petitioner's work has already significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated 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 *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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. at 1136.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form

the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190); *Visinscaia*, 4 F.Supp.3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

Finally, on appeal, the petitioner provides for the first time, evidence that the made one of the petitioner's published works available on their The evidence the petitioner provides on appeal reflects a print date May 27, 2014. The printing of this evidence postdates the petition's August 27, 2013 priority date and the evidence lacks any indication that this entity posted the petitioner's work prior to the priority date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. Even if the petitioner demonstrated this entity posted her work on its eDoc Server prior to the priority date, the petitioner has submitted insufficient evidence to demonstrate that a prestigious entity making the petitioner's work performed at one of the entity's sponsored institutes available on their website is indicative of work that constitutes a contribution of major significance in the petitioner's field. The work is already disseminated in the field; it appeared in the journal *Surface Science*. While inclusion on the society's website may give the work more visibility in the field, at issue is the impact upon dissemination. The record contains no evidence that the society selects only those works already demonstrated to be influential in the field for inclusion on their site.

Based on the forgoing, the petitioner has not submitted evidence that meets this criterion's requirements.

> *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 the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, including several articles published in the regulatory required publication types, to establish that she meets this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

## 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 has risen to the very top of his or her 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. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[3]

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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

[3] 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).