



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 26 2015** 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:

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.

According to the initial cover letter, the petitioner seeks classification as an alien of extraordinary ability in “the field of creativity as it relates to public policy,” 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 petitioner explains in the initial cover letter dated February 20, 2013:

Creativity encompasses the development and application of useful new ideas to solve practical economic, social, political or environmental problems while Public Policy brings together and synthesizes the concepts and theories of many social science fields (including economics, sociology, political science, program evaluation, policy analysis, and public management) and applies those concepts and theories to problems of governance, public administration and management.

The petitioner obtained his Ph.D. in rural sociology.¹ 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 asserts that he meets the criterion under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vi) and (viii). On November 25, 2014, we issued a notice of intent to dismiss (NOID), expressing concern that the petitioner had misrepresented that he still worked for the [REDACTED]. Specifically, we noted that [REDACTED] confirmed that he no longer worked there and [REDACTED] website listed his affiliation as “Pre-Prep Dining Assistant, Dining Serv-Pre-Prep (0489).” On December 29, 2014, the petitioner filed a response to our NOID, asserting that any reference from him or his counsel of his continuing employment with the [REDACTED] was inadvertently made. Significantly, the petitioner notes that on the Form G-325A Biographic Information accompanying his Form I-485, Application to Register Permanent Residence or Adjust Status, which he signed on January 25, 2013, he indicated that his employment with [REDACTED] ended in August 2012. In addition, the petitioner explains that he currently holds a “part-time position as Pre-Prep Assistant in the [REDACTED]” temporarily to supplement his family income. In light of the petitioner’s response to the NOID, we will not make a finding of material misrepresentation.

¹ The petitioner’s degree is a valid means of determining the petitioner’s field. *Buletini v. INS*, 860 F. Supp. 1222, 1230 (E.D. Mich. 1994) (applying the Department of Labor regulation defining science as any field for which colleges and universities commonly offer specialized courses leading to a degree under the extraordinary ability classification). While the record reflects that at least a few universities have a department or institute dedicated to Creativity Studies, the petitioner has not demonstrated the subject is commonly offered.

Notwithstanding this finding, for the reasons discussed below, we agree with the director that the petitioner has not established his 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 he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, 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. O-1 Nonimmigrant Visa

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). We need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center as the law is clear that an agency is not bound to follow an earlier determination as to a visa applicant where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Tapis Int'l v. INS*, 94 F. Supp. 2d 172, 177 (D. Mass. 2000) (Dkt. 10); *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. 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. 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).

For the first time on appeal, the petitioner asserts that he meets this criterion because: (1) he received the [REDACTED] which recognized the petitioner's "successful presentations over the years at the annual [REDACTED] conference; (2) the [REDACTED] appointed the petitioner as its [REDACTED] (3) the government of Nigeria and the [REDACTED] have "adopted" the petitioner's book; and (4) the government of Nigeria has declared September 14 as the National Day of Creativity. As the petitioner did not raise these claims before the director, including in response to the director's request for evidence that advised the petitioner had not presented evidence relevant to this claim, the director did not err in declining to discuss this criterion. Regardless, the petitioner has not established that he meets this criterion on appeal.

First, the petitioner did not submit primary evidence of his [REDACTED] or evidence that primary and secondary evidence does not exist or is unavailable. Thus, pursuant to 8 C.F.R. § 103.2(b)(2), the petitioner may not rely on a letter or even an affidavit. Further, the petitioner has not shown that a [REDACTED] is a qualifying award under the criterion. According to a 2008 letter from [REDACTED] since 1995, the petitioner has "made several successful presentations at the annual [REDACTED] conferences,] in recognition of which he received the [REDACTED]. Neither Mr. [REDACTED] nor any other evidence in the record indicates that the award was in recognition of the petitioner's excellence in the field. Rather, according to Mr. [REDACTED] the award was in recognition of the petitioner's "successful presentations" at conferences. Mr. [REDACTED] has not provided information in his letter explaining what constitutes a successful presentation, or evidence establishing that the petitioner's successful presentations demonstrate his excellence in the field.

Moreover, the petitioner has not provided evidence showing that the award is nationally or internationally recognized, or that individuals and/or entities not associated with the [REDACTED] know about the award. Mr. [REDACTED] does not assert that the [REDACTED] is nationally or

² 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.

internationally recognized or provide examples of such recognition. Regardless, promotional evidence from the issuing entity 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 the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the selections for the award in any year in a professional publication, a major trade publication, a nationally or internationally circulated publication, or in major media.

Second, the petitioner has not shown that his appointment as a [REDACTED] Nigeria constitutes an award or prize, or, assuming that it is an award or prize, that it is qualifying under the criterion. In his November 2005 letter, [REDACTED] Secretary, [REDACTED] of Nigeria, invites the petitioner to visit the organization's headquarters in Nigeria to deliver a lecture on creativity and innovation related topics. The letter further states that when the petitioner visits the organization's headquarters, it intends to appoint him as its [REDACTED]. The petitioner has submitted a picture taken in front of a sign of "Headquarters, [REDACTED] Nigeria." The petitioner has not, however, submitted evidence that the [REDACTED] of Nigeria has actually appointed him a [REDACTED]. Moreover, neither Mr. [REDACTED] nor any other evidence in the record establishes that the organization offers the petitioner the appointment in recognition of his excellence in the field of endeavor. Mr. [REDACTED] letter does not provide specific information relating to why the organization is offering the petitioner the appointment. In addition, the petitioner has not shown that an appointment of a [REDACTED] of this organization constitutes an award or prize. The petitioner has also not submitted any evidence showing that the appointment is recognized by any individual or entity not associated with the organization. *See Braga*, No. CV 06-5105 SJO at 10.

Third, the petitioner has not shown that a decision by the government of Nigeria and the [REDACTED] of Nigeria to adopt the petitioner's book constitute an award or prize. As supporting evidence that he meets this criterion based on the "adopt[ion]" of his book, the petitioner points to the forward in his book [REDACTED] materials relating to the launch and purchase of the petitioner's book, and a letter from the [REDACTED] indicating that the petitioner's "activities has [sic] been incorporated in Article 5, Section I (ii) Page 3, of our enabling constitution approved by the [REDACTED]." None of the evidence to which the petitioner points shows that the government of Nigeria or the [REDACTED] of Nigeria has given him any award or prize, or that the award or prize is nationally or internationally recognized. While the government of Nigeria and the [REDACTED] of Nigeria have found value and interest in the petitioner's books and/or ideas, this awareness is not evidence of a prize or award in recognition of the petitioner's excellence in the field.

Fourth, on appeal, the petitioner has not pointed to any evidence in the record establishing that the declaration of [REDACTED] is associated with the petitioner or his work. The petitioner asserts on appeal that the National Day of Creativity is "an event which [the petitioner's] work touched off." The petitioner, however, has pointed to no evidence in the record in support of this claim. Nor has the petitioner provided evidence showing a causal

connection between his work and the declaration of Nigeria's National Day of Creativity. In fact, the petitioner did not provide any evidence about the day other than a website address. A review of that address, <http://www.>, reveals that the Nigerian government selected the date "because it was the day Nigeria's membership of the came into force."³ Similarly, the other website the petitioner references, <http://>, provides: "Highlights of the programme include an exhibition of various arts and crafts, cultural performances, paper presentations by the Directors-General of the on censorship and distribution framework of Nigerian films and anti-piracy laws in Nigeria."⁴ This information reveals that Nigeria's National Day of Creativity relates to artistic creativity rather than the petitioner's field of sociology or even his focus on creativity as it relates to public policy. Moreover, assuming *arguendo* that the petitioner's work resulted in Nigeria declaring a National Day of Creativity, the petitioner has not shown how the declaration constitutes his receipt of an award or prize for excellence in the field, as required by the plain language of the criterion.

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

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner asserts that he meets this criterion because of published reviews of his books. He submits evidence that the published a review of his book published a review of his book. The petitioner has not shown that he meets this criterion.

First, the petitioner has not shown that reviews of his written works constitute materials about the petitioner, relating to his work. Rather, book reviews are about the books, not their authors. Indeed, other than stating the petitioner's former employment as the Director of Studies at the review provides no other information about the petitioner. Similarly, the review is about the petitioner's book and includes minimal to no information about the petitioner. The petitioner has not shown that these book reviews constitute materials about him, as required under the criterion. See

³ See <http://www.> accessed January 23, 2015 and incorporated into the record of proceeding.

⁴ See <http://>, accessed January 23, 2015 and incorporated into the record of proceeding.

generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Second, the petitioner has not shown that the [REDACTED] constitutes a professional or major trade publication or other major media. On appeal, citing the website at [http://www.\[REDACTED\]](http://www.[REDACTED]) the petitioner states that the [REDACTED] is “an academic journal.” According to the information posted on the website, [REDACTED] provides “coverage of new and forthcoming African publications” and includes a “book review section, reviews of new journals, and features a variety of news, reports, and articles about African book trade activities and developments.” The website does not provide any circulation or distribution data. The petitioner has not provided evidence showing that the publication is a professional or major trade publication or other major media. Similarly, the petitioner has not shown that [REDACTED] is a qualifying publication or other major media, as required under the criterion. Specifically, on appeal, the petitioner cites the website at [http://www.\[REDACTED\]](http://www.[REDACTED]) in support of his assertion that [REDACTED] is a bi-monthly publication of the [REDACTED] [REDACTED]” which the petitioner claims is one of the three major professional creativity organizations in the world. The website address that the petitioner provides is not valid, and thus does not support the petitioner’s assertions relating to [REDACTED] or the [REDACTED].

Finally, the record includes other evidence that the petitioner has submitted to show that he meets this criterion, including reviews of his book [REDACTED] posted on [REDACTED] and materials from conferences. On appeal, the petitioner has not continued to assert that these materials meet this criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal). Moreover, the petitioner has not submitted evidence showing that these materials have been published in professional or major trade publications or other major media.

Accordingly, the petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

⁵ See [http://www.\[REDACTED\]](http://www.[REDACTED]) accessed on October 21, 2014 and incorporated into the record of proceeding.

⁶ See [http://www.\[REDACTED\]](http://www.[REDACTED]) and [http://www.\[REDACTED\]](http://www.[REDACTED]), accessed on October 21, 2014 and incorporated into the record of proceeding.

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 he meets this criterion because of the “discoveries that he has made and ideas that he has developed to explain the human condition and to help humanity to better understand and resolve the crises it is facing, and to build the future it desires.” The petitioner further states that “[s]ome of [his] central ideas . . . are: (1) [redacted]; (2) [redacted]; (3) [redacted]; (4) [redacted]; (5) [the] [redacted] (6) [redacted]; and (7) [redacted].” The petitioner has not shown that he meets this criterion.

First, the petitioner's authorship of materials alone, without evidence of the materials' impact in the field, is insufficient to establish that the petitioner meets this criterion. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations are not sufficient evidence under this criterion absent evidence that they are of “major significance” in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In *Kazarian*, 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 published material is a contribution of major significance, we look at the impact the material has after publication. The evidence in the record does not establish that any of the petitioner's written works constitutes major significance in the field, such that it significantly impacted the field as a whole or that it fundamentally advanced the field as a whole.

The petitioner has submitted evidence that the Nigerian government praised his 1992 book [redacted]. On appeal, the petitioner submits a forward in the book written by the Secretary to the Government of Nigeria and materials from 1993 and 1994 relating to the Nigerian government's involvement in the launching and purchasing of the petitioner's book. The evidence, relates to the Nigerian government's positive reception of the petitioner's book at the time of publication. At issue, however, is not the initial reception of the book. At issue is the impact the petitioner's book has had in the field as a whole upon publication and dissemination. Similarly, Mr. [redacted]'s review of the petitioner's book [redacted] does not provide any information on how the petitioner's book ultimately impacted the field as a whole. Rather, Mr. [redacted]'s review focuses on the contents of the book and his opinion of the contents of the book, without discussing how the book has impacted the field as a whole. 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. *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 has not shown what impact his book has had in the field since its publishing in 1992.

Moreover, the email and note from now deceased [REDACTED] former Professor [REDACTED] and a former [REDACTED] do not establish that the petitioner meets this criterion. For example, according to a 1995 handwritten note from Professor [REDACTED] the petitioner's writing entitled '[REDACTED]' was "a remarkable piece, for which [the petitioner was] to be commended highly and encouraged greatly." Professor [REDACTED] praised the petitioner's piece in general terms, but did not discuss the impact of the piece in the field as a whole, or provide evidence showing that the impact is consistent with contributions of major significance in the field.

Second, conclusory statements that lack details on why the petitioner's work was original or how it impacted the field as a whole are insufficient to establish that the petitioner has met this criterion. A 1996 handwritten note with the initials '[REDACTED]' at the bottom on the letterhead of the [REDACTED] states that the petitioner's paper on creativity training "is getting some circulation" and that the petitioner's "message is the [REDACTED]" (Capitalized letters in original.) The petitioner asserts that Professor [REDACTED] "one of the foremost and most highly respected creativity scholars in modern time," had written the note. The letter does not provide any specific information on how the petitioner's paper has impacted the field or provide examples showing that the impact is consistent with contributions of major significant in the field. Rather, the handwritten note, which appears to be a personal note to the petitioner, praises the petitioner and his work in general terms. While Professor [REDACTED] indicates that she is bringing the petitioner's work to the attention of others, she does not indicate that those others have already applied the petitioner's ideas in their own work. This note is insufficient to show that the petitioner meets this criterion.

Similarly, the 1999 letter from [REDACTED] Ph.D., Professor [REDACTED], does not provide information on how the petitioner's work has impacted the field as a whole. According to Professor [REDACTED] the petitioner "is credited with important and valuable contributions to the field of creativity and to critical areas of national concern," including issues relating to "disadvantaged persons and the public service," "inner city youth and the development of entrepreneurship" and "teaching and training of [] scholars." The letter briefly explains the nature and conclusions of the petitioner's work. Other than stating, in a conclusory manner, that the petitioner has made "important and valuable contributions" and "major significant contributions," Professor [REDACTED] letter does not explain how the petitioner's work has impacted the field as a whole. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, we need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

Third, evidence that the petitioner may in the future impact the field is not sufficient to establish that the petitioner has met this criterion, which requires evidence that the petitioner has already made original contributions of major significance in the field. In his 1995 handwritten note, Professor ██████ stated that he “hope[d the petitioner’s] name will become as well known for creativity in the Third World as ██████ is here and in many other countries.”⁷ Professor ██████ requested that the petitioner “keep [him] informed on [the] potentially world-shaking work [the petitioner was] embarking on.” In his 1999 letter, Professor ██████ stated that the petitioner’s “research will lead to significant advances in the economic and social development of America’s low-income neighborhoods as well as the others.” The petitioner has not shown at the time he filed his petition in 2013, many years after the handwritten note and letter, what the impact, if any, his work has had in the field or that the impact is consistent with contributions of major significance in the field. In his 2004 email, Professor ██████ stated that it was good that the petitioner and “the great Nigeria group” could celebrate the ██████ celebration with him, and noted that his “[p]rediction and dream of [the petitioner] becoming the ██████ of the African continent is coming true.” Professor ██████ did not explain in this email or any other writing in the record why he believed that the petitioner was becoming the ██████ of the African continent. The petitioner also has not explained how becoming the ██████ of the African continent constitutes contributions of major significance in the field. Similarly, positive book reviews demonstrate the reviewer’s opinion of the book at the time of the review, but do not demonstrate the ultimate impact of the book after publication and dissemination. The record does not reflect that other sociologists or those focusing on creative studies have cited the petitioner’s books in their own work.

Vague letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁸ *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115. 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 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); *See Visinscaia*, 4 F. Supp. 3d 126, 134-35 (upholding our decision to give minimal weight to

⁷ On appeal, the petitioner asserts that ██████ is “the world-famous ‘father’ of modern creativity and Professor ██████ senior partner in founding modern world’s spreading creativity movement.”

⁸ 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.

vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Fourth, evidence that the petitioner's presentations and/or workshops have been well received is insufficient to show that he has made original contributions of major significance in the field. According to 1994 documents from Nigeria governmental entities, the petitioner's 1994 creative problem solving workshop was "a success," of "immense benefit," was "found to be very educative and useful." The documents also show that the various governmental entities requested the petitioner to conduct additional workshops. At issue is not how the individuals who attended his workshops or presentations initially received his work. Rather, at issue is the impact the petitioner's work has had on the field as a whole after dissemination through the workshops. 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 126, 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).

Fifth, the evidence that the petitioner's work has "inspired" the work of another is insufficient to establish the impact of the petitioner's work in the field. The petitioner has submitted a letter and an email from [REDACTED] as well as "a synopsis for the [REDACTED] initiative inspired by [the petitioner]." The evidence shows that Mr. [REDACTED] found value in the petitioner's work, relied on the petitioner's work in his own work on a project called '[REDACTED]' and organized a roundtable discussion at the [REDACTED], in which the petitioner participated. Evidence of Mr. [REDACTED] appreciation of the petitioner's work is insufficient to show the impact of the petitioner's work in the field. This evidence shows that certain people, including Mr. [REDACTED] have found value and interest in the petitioner's work. This, however, is insufficient to show a wider impact of the petitioner's work in the field as a whole consistent with a contribution of major significance.

Sixth, the petitioner's involvement in social media platforms does not establish his impact in the field. The petitioner's social media presence relates to the dissemination of his ideas and works. Mere dissemination of one's work does not indicate the impact of the work. Rather, to show that the petitioner meets this criterion, he must submit sufficient evidence of the impact in the field after the dissemination of his work, and he must show that the impact is consistent with contributions of major significance in the field. The petitioner has not made such a showing.

Finally, the record includes other types of evidence, including the petitioner's authorship of other materials, involvement in conferences, and other letters of reference. On appeal, the petitioner has not specifically maintained that these types of evidence meet this criterion. As such, the petitioner has abandoned these issues, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the petitioner has not presented evidence of his 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).

On appeal, the petitioner asserts that he meets this criterion because he authored [REDACTED]

[REDACTED] The petitioner has not shown that he meets this criterion.

First, the petitioner has not shown that [REDACTED] has been published in a qualifying publication or other major media. The petitioner asserts on appeal that was "[REDACTED]" published this book. The petitioner has not submitted any evidence relating to this publisher that establishes the publisher as a professional or major trade publication or other major media, as required under the plain language of the criterion. Similarly, the petitioner has not submitted any evidence relating to [REDACTED] which the petitioner claims published his [REDACTED]. Thus, the petitioner has not shown that his books have been published in a qualifying publication or other major media.

Second, although the petitioner claims on page 11 of the appellate brief that [REDACTED] and [REDACTED] published his book [REDACTED] the petitioner has provided insufficient evidence showing which publisher actually published the book. The petitioner has provided an incomplete copy of the book, including the title page and the copyright page. The incomplete copy does not indicate that [REDACTED] published the book. Rather, the copyright page appears to indicate that the petitioner had self-published the book and that the book was printed in the United States by [REDACTED]. The petitioner has not submitted any evidence relating to [REDACTED] showing that it is a qualifying publication or other major media.¹⁰

Finally, the petitioner has submitted other evidence to support his assertion that he meets this criterion, including evidence of his authorship of research proposals, book proposals, symposium and conference presentations, including those entitled "[REDACTED]"

¹⁰ The websites for both [REDACTED] show that they are self-publishing companies See [http://www.\[REDACTED\]](http://www.[REDACTED]) and [https://www.\[REDACTED\]](https://www.[REDACTED]) accessed on January 20, 2015 and incorporated into the record of proceeding.

The petitioner has not submitted any evidence that these materials have been published, such as in conference proceedings. On appeal, the petitioner has not continued to assert that his other works, including those not specifically listed above, establish that he meets this criterion. As such, the petitioner has abandoned these issues, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9. Moreover, the petitioner has not submitted evidence showing that these written works have been published or that they have been published in professional or major trade publications or other major media.

Accordingly, the petitioner has not presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that he meets this criterion because: (1) he facilitated collaborations between [redacted] and between [redacted] and [redacted] (2) he facilitated the establishment of [redacted] (3) the [redacted] requested the petitioner's assistance in rebuilding the school; (4) [redacted] has "applaud[ed]" the petitioner's activities; and (5) [redacted] has accepted the petitioner's request for support in the [redacted] initiative. The petitioner has not shown that he meets this criterion.

To show that the petitioner meets this criterion, the petitioner has to demonstrate that he has performed a leading or critical role for qualifying organizations or establishments. A leading role should be evident based not only on the petitioner's title but his duties associated with the position. A critical role should be apparent from the petitioner's impact on the organization or establishment as a whole. To show his role in an organization or establishment, the petitioner may submit an organizational chart demonstrating how his role fits within the hierarchy of the organization or establishment.

First, although the evidence shows that the petitioner has been involved in the collaborative efforts among [redacted] and universities in Africa, the petitioner has not shown that he has performed in a leading or critical role in the collaborative efforts. On appeal, the petitioner points to a 2012 letter from [redacted] and a 2011 letter from [redacted], Ph.D., Vice-Chancellor, [redacted] as supporting evidence that his work in their collaborative efforts meets this criterion. The [redacted] letter provides that a group from [redacted] visited [redacted] in 2011 and that [redacted] invited the petitioner and others from [redacted] to visit [redacted] in Nigeria in 2012. The letter further states that the purpose of the visit to Nigeria was "to agree on a range of capacity building and

development projects for the implementation of the collaborative relationship” between [REDACTED] and [REDACTED]. The letter does not provide specific information on what role the petitioner has performed in the collaborative efforts between the two schools, or evidence showing that the petitioner’s role is leading or critical to the collaborative efforts. Similarly, although the 2011 letter from Dr. [REDACTED] asks the petitioner to “set in motion the machinery for dialogue” between the two schools, the letter does not indicate what the petitioner has done in the collaborative efforts or that the collaborative efforts have even taken place between the two schools.

Significantly, in his undated letter, [REDACTED] Ph.D., Director of [REDACTED], makes no mention of the petitioner having any involvement in the collaborative efforts among the schools. Nor does Dr. [REDACTED] letter provide evidence showing that the petitioner’s role in the collaborative efforts is either leading or critical. Similarly, the January 2009 online announcement of the petitioner joining the [REDACTED] makes no mention of the petitioner’s involvement in any collaboration among the schools. In addition, a September 2011 working paper relating to the [REDACTED] and [REDACTED] collaboration makes no mention of the petitioner’s role in the collaboration. As such, the petitioner has not shown that he meets this criterion based on the collaborative efforts among the schools.

Second, the petitioner has not shown that his involvement in establishing [REDACTED] relationship between [REDACTED] meets this criterion. On appeal, the petitioner asserts that he facilitated negotiations that “culminated in the establishment of [REDACTED] Relationship between the [REDACTED]” The 2004 letter from the mayor of [REDACTED] New York, indicates that the petitioner will facilitate communications between the two cities, without providing details on what specifically the petitioner will do or has done. The record also includes an undated article entitled “[REDACTED]” published in [REDACTED]. According to the article, the petitioner “visited the City of [REDACTED] along with several delegates from [REDACTED].” Although the article shows that the petitioner was involved in the process, it does not provide details on what the petitioner did to establish the [REDACTED] relationship, other than visiting [REDACTED] with delegates from [REDACTED]. The petitioner has not shown that his activities of visiting [REDACTED] and facilitating negotiations are indicative of the petitioner performing either a leading or critical role. The petitioner has also not specified the organization or establishment for which the petitioner has performed a leading or critical role when establishing the [REDACTED] relationship or demonstrated that the organization or establishment has a distinguished reputation, as required under the criterion.

Third, the 2006 letter from [REDACTED] Ph.D., Director, [REDACTED] the [REDACTED] indicates that the petitioner has expressed interest in rebuilding the [REDACTED]. The letter, however, does not establish what the petitioner has done for the university or what role the petitioner has in the rebuilding efforts. Although the letter notes that the petitioner has agreed to participate in a number of events and programs, it does not confirm that the petitioner has actually participated in these events or programs, or that his participation constitutes his performing a leading or critical role in the rebuilding of the university.

Fourth, the 2004 letter from [REDACTED] President of [REDACTED] states that [REDACTED] has decided to provide scholarships and materials to [REDACTED] selected recipients. The letter mentions the petitioner's name once, but does not provide any information relating to what he has done for [REDACTED] or provide evidence showing that the role the petitioner has performed for these organizations or establishments is either leading or critical.

Fifth, the 2006 email from [REDACTED] with the email address of [REDACTED].com indicates that the petitioner has been involved in a project associated with the [REDACTED], which according to the petitioner stands for [REDACTED]. Neither the email nor other evidence in the record indicates what specifically the petitioner has done as relating to the project or how his role in the project constitutes a leading or critical role for the project. Moreover, the petitioner has also not provided information relating to the reputation, let alone distinguished reputation, of this project or [REDACTED]. As such, the petitioner has not shown that he meets this criterion based on his involvement in the project.

Accordingly, the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

C. 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.¹²

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.

¹² 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).