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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-R-L-

DATE: SEPT. 24, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an industrial engineer, seeks classification as an “alien of extraordinary ability” in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Currently, the Petitioner is working as a Research Associate in the [REDACTED] at the [REDACTED]. 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. In the brief, the Petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), and (vi), and that he submitted comparable evidence of his eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the Petitioner has not established his eligibility for the classification sought.

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 has 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 sustained acclaim and the recognition of his 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 he 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. at 376 (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 Criteria¹

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

¹ We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

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The Director determined that the Petitioner had not established eligibility for this criterion. The Petitioner submitted evidence of a [REDACTED] award from [REDACTED] a company that produces automated test equipment and virtual instrumentation software, that was “presented to [REDACTED] In addition, the record included a photograph of the Petitioner receiving the award and a letter from [REDACTED], Professor of Mechanical Engineering at [REDACTED] stating that “[t]he award recognizes [the Petitioner’s] critical contribution towards the development of an invaluable data analytics toolkit.” Furthermore, the Petitioner provided “Background & Awards” information about the [REDACTED] program from [REDACTED] that states:

[REDACTED] recognize top 3rd party software products based on [REDACTED] that are high quality, demonstrate excellent integration, and fill a business need.

[REDACTED] is a global competition among 700+ independent third party partners consisting of individuals, academia, research institutes and industry.

According to the [REDACTED] “Eligibility” rules, product submissions for the award “must be based on [REDACTED] technology and complementary to the [REDACTED] platform.” The Director determined that the submitted evidence was not sufficient to show that the aforementioned award was recognized beyond the context of the [REDACTED] Program meeting where it was presented, and therefore not commensurate with a nationally or internationally recognized prize or award for excellence in the field. We note that eligibility for the award was restricted to [REDACTED] customers who utilize the company’s [REDACTED] software platform. The Petitioner has not submitted evidence of the stature of [REDACTED] or [REDACTED] such that awards by the company are considered evidence of excellence in the field of endeavor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner’s awards be nationally or internationally recognized in the field of endeavor, and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the [REDACTED] such that it rises to the level of a nationally or internationally recognized award for excellence in the field of endeavor.

In addition, the Petitioner asserts that he received an “Honorable Mention” in the [REDACTED] Conference Data Challenge. The Petitioner provided information from the [REDACTED] website stating:

The winners for this year’s Annual Data Challenge were announced. The finalists were chosen based on top five scores obtained according to the scoring procedure outlined here. The finalists were asked to submit a detailed paper for technical evaluations of their technical approach. Top two teams were selected as winners from the five finalists and have been invited to submit their papers to the [REDACTED] The third, fourth, and

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fifth place teams were also invited to submit papers to [REDACTED] and/or present their work at the conference.

The information from the [REDACTED] website included the [REDACTED] scores for the [REDACTED] reflecting that the Petitioner's team tied another team for [REDACTED]. Although the Petitioner's team qualified as a finalist, there is no documentary evidence showing that the [REDACTED] ultimately selected his team as one of the two winning teams who received the [REDACTED] award. Qualifying as a finalist is not equivalent to receiving a nationally or internationally recognized prize or award for excellence in the field. Furthermore, the Petitioner has not demonstrated that his team's fifth place honorable mention was recognized beyond the context of the [REDACTED] conference at a level indicative of a nationally or internationally recognized award for excellence in the field.

Lastly, the Petitioner asserts that he received an [REDACTED] nomination. The Petitioner submitted an October 2012 email from [REDACTED] Italy, inviting the Petitioner to propose his candidacy for the [REDACTED] and letters supporting his nomination, but there is no evidence showing that he ultimately received the [REDACTED]. The plain language of this criterion specifically requires evidence of the petitioner's receipt of nationally or internationally recognized "prizes or awards" for excellence in the field of endeavor. An invitation to apply for an award does not equate to receipt of the award.

In light of the above, the Petitioner has not established that he meets this regulatory criterion.

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

The Director determined that the Petitioner had not established eligibility for this criterion. The Petitioner submitted articles in [REDACTED] entitled [REDACTED] (November 2012) and [REDACTED] (October 2013). The first article is about [REDACTED] second article is about [REDACTED]. The plain language of the regulation requires "published material about the alien." While the two articles briefly mention the Petitioner and several others, they are not about him. Materials that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Furthermore, although the Petitioner provided information about [REDACTED] from its website, he did not submit circulation statistics or other evidence showing that the magazine is a major trade publication or other major media.

The Petitioner also provided a November 2012 article entitled [REDACTED] that was posted online at [REDACTED] but the article was not about the Petitioner and its author was not

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identified as required by this regulatory criterion. In addition, there are no online visitor statistics or other evidence showing that [REDACTED] is a form of major media.

Documentation submitted included an [REDACTED] 2013, article entitled [REDACTED], that was posted on the [REDACTED] websites. Although the article lists the Petitioner as one of the prognostic technique's three inventors, the article is about the technical innovation and not the Petitioner. Furthermore, the author of the article was not identified and there is no documentary evidence demonstrating that the aforementioned websites are major media.

The Petitioner also provided an April 2012 article entitled [REDACTED] that was posted on the [REDACTED] website. While the article quotes the Petitioner, the material is about the predictive software developed by the Petitioner's research team at [REDACTED] rather than the Petitioner. Again, the plain language of the regulation requires "published material about the alien." Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act (requiring evidence of only published material "about the alien's work"). Furthermore, although the Petitioner submitted information about [REDACTED] from its website, there is no evidence showing that its number of monthly visitors elevates the website to a form of major media relative to other online news sources.

In addition, the Petitioner submitted a May 2012 article entitled [REDACTED] in [REDACTED] a weekly online magazine covering [REDACTED]. Once again, while the article mentions the Petitioner, the article is about the maintenance software that he and others developed at [REDACTED] and not the Petitioner. Regardless, there is no evidence showing that [REDACTED] is a major trade publication or a form of major media.

Lastly, the Petitioner provided a March 2012 article posted at [REDACTED] entitled [REDACTED] but the author of the material was not identified as required by this regulatory criterion. A notation appearing at the bottom of the article states that it was "[p]rovided by the [REDACTED]. Thus, the submitted article is actually a press release prepared and authored by [REDACTED] representatives rather than independent journalists. In addition, the article is about wind energy and research efforts at [REDACTED] to monitor wind turbine performance rather than the Petitioner. With regard to the information from [REDACTED] website stating that its "readership has grown steadily to include 1.75 million scientists, researchers, and engineers every month," USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). There is no objective evidence showing that the number of monthly visitors to [REDACTED] elevates it to a form of major media.

In light of the above, the Petitioner has not established that he meets this regulatory criterion.

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

The evidence supports the Director's finding that the Petitioner meets this regulatory criterion.

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

The Director determined that the Petitioner had not established eligibility for this regulatory criterion. The Petitioner submitted his publications and presentations, citation evidence for his published work, invention disclosures for a [REDACTED] system and a [REDACTED] system, a patent application for a [REDACTED] various online articles about his work, and letters of support from colleagues. The Director acknowledged the Petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the Petitioner's work equated to original contributions of major significance in the field. For example, the Director noted that "not every patented invention constitutes a significant contribution," and that the number of independent cites to the Petitioner's articles did not show that his "work has been of major significance in the field." The Director therefore concluded that the Petitioner did not establish eligibility for this regulatory criterion.

The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions" that are "of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original scientific contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

With regard to the Petitioner's published and presented work, the regulations contain a separate criterion concerning the authorship of scholarly articles in professional publications. 8 C.F.R. § 204.5(h)(3)(vi). In *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Furthermore, there is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, the petitioner must document the actual impact of his article or presentation. An extensive number of favorable independent citations for an article authored by a petitioner may indicate that other researchers are familiar with his work and have been influenced by it. A less extensive citation record, on the other hand, is generally not probative of a petitioner's impact in the field.

In the appeal brief, the Petitioner mentions that more than 80 articles cite to his body of published and presented work, and that this shows that independent researchers have relied upon his findings. Included in the Petitioner's submitted citation evidence are the following articles reflecting:

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1. [REDACTED] was independently cited to 20 times (plus three self-cites by the Petitioner's coauthors [REDACTED]);
2. [REDACTED] was independently cited to once (plus five self-cites by the Petitioner and his coauthors);
3. [REDACTED] was independently cited to twice (plus three self-cites by the Petitioner's coauthors);
4. [REDACTED] was independently cited to once (plus one self-cite by the Petitioner's coauthor [REDACTED] and [REDACTED]);
5. [REDACTED] was independently cited to 11 times (plus three self-cites by the Petitioner's coauthor [REDACTED]).

Self-citation is a normal, expected practice. Self-citation, however, does not show to what extent a researcher has influenced others' work. The submitted citation evidence reflects that none of the Petitioner's articles have been independently cited to more than 20 times. The Petitioner has not established that the number of independent cites per article for his published work is indicative of scientific contributions of major significance in the field.

The Petitioner points to his conference and workshop presentations (such as the [REDACTED] and the [REDACTED] as further evidence of his original contributions in the [REDACTED] field. With regard to the Petitioner's conference presentations, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, employers, and government agencies promote and sponsor these meetings and conferences. Participation in such events, however, does not, alone, equate to original contributions of major significance in the field. There is no documentary evidence showing that the Petitioner's presented work has been heavily cited, has significantly impacted the field as a whole, or otherwise constitutes original contributions of major significance in the field.

In addition, the Petitioner asserts on appeal that he received a [REDACTED] award and that his [REDACTED] was recognized by the [REDACTED]. The scientific committee's invitation to the Petitioner to propose his candidacy for the [REDACTED] and the [REDACTED] have already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the awards criterion

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is not presumptive evidence that the Petitioner also meets this criterion. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, the Petitioner has not shown that his [REDACTED] candidacy and the [REDACTED] are indicative of contributions of major significance in the field.

In connection with the [REDACTED] nomination, the Petitioner submitted a letter from [REDACTED], Reliability and Performance Manager, [REDACTED], commenting on the “novelty and potential” of the Petitioner’s work. [REDACTED] asserts that the resulting impact from the Petitioner’s team’s research “will be profound on wind turbine operators by minimizing downtime and overhead.” [REDACTED] further states: “As this work continues to mature, I have no doubt that their work will be highly sought after by many wind turbine researchers, manufacturers, users, and service providers.” There is no documentary evidence showing, however, that the Petitioner’s work has already had this effect. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). [REDACTED] expectation regarding the possible future impact of the Petitioner’s work is not evidence of the Petitioner’s eligibility at the time of filing.

Also in connection with the [REDACTED] nomination, the Petitioner provided a letter from [REDACTED], Professor and Director, [REDACTED] stating that the Petitioner “showed the use of multi-regime modeling approach to quantify the power generation of wind turbines, and later improved the results by incorporating a clustering method to compare similar turbines.” While [REDACTED] notes the “potential impact” of the Petitioner’s work, he does not provide specific examples of how the Petitioner’s work has already been widely utilized by power generation companies for wind turbine health monitoring or has otherwise been commensurate with original contributions of major significance in the field.

With respect to the Most Innovative Product award from [REDACTED] Executive Director, [REDACTED] stated: “This is one of the few distinguished awards given out to recognize top professionals who have excelled in the [REDACTED] field. It is a global competition among [REDACTED] independent third party partners and users” The aforementioned award may recognize [REDACTED] customers who demonstrated excellence in utilizing the company’s [REDACTED] software platform, but there is no documentary evidence demonstrating that the award was presented for an original scientific contribution of major significance in the field.

The Petitioner’s appeal brief points to a patent application that [REDACTED] filed for a [REDACTED] created by the Petitioner and [REDACTED] but there is no documentary evidence showing that a U.S. or an international patent was granted for the invention. Regardless, while issuance of a patent recognizes the originality of an idea, it does not automatically demonstrate that the invention is a scientific contribution of major significance in the field. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215, Dec. 221, n. 7 (Act. Assoc. Comm’r 1998). Rather, the significance of the innovation must be determined on a case-by-case

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basis. *Id.* Regarding the “Turbine-to-turbine prognostics technique for wind farms,” [REDACTED] Director, [REDACTED] asserted:

Through this invention the [REDACTED] has successfully recruited two new members interested in Wind Farms, received industry funding over \$170,000 and generated a number of funded [REDACTED] awards in related fields. The University has invested heavily in the technology both in terms of the patent protection and in terms of further development as we see this as a significant contribution.

[REDACTED] indicates that the Petitioner’s invention has allowed the [REDACTED] to recruit new members interested in Wind Farms and has generated outside funding for the [REDACTED]. In addition, [REDACTED] mentions that [REDACTED] has invested heavily in “further development” of the technology, but there is no documentary evidence demonstrating that the invention has already impacted the field beyond the university such that the Petitioner’s technique constitutes a scientific contribution of major significance in the field. The plain language of the regulation requires that the contributions be “of major significance in the field” rather than just to his research institution or employer.

Although the Petitioner’s work has contributed to ongoing research at [REDACTED] there is no evidence demonstrating that his findings and innovations have been applied or implemented at a level commensurate with scientific contributions of major significance in the field. With respect to the Petitioner’s occupation, the U.S. Department of Labor’s *Occupational Outlook Handbook (OOH)*, 2014-15 Edition states: “Industrial engineers find ways to eliminate wastefulness in production processes. They devise efficient ways to use workers, machines, materials, information, and energy to make a product or provide a service.” In addition, the OOH indicates that industrial engineers typically perform duties such as determining how to manufacture parts or products, or deliver services, with maximum efficiency; enacting quality control procedures to resolve production problems or minimize cost; and designing control systems to coordinate activities and production planning to ensure that products meet quality standards. See <http://www.bls.gov/ooh/architecture-and-engineering/industrial-engineers.htm#tab-2>, accessed on September 14, 2015, copy incorporated into the record of proceeding.

Furthermore, according to the [REDACTED] “Industrial engineers figure out how to do things better. They engineer processes and systems that improve quality and productivity. They work to eliminate waste of time, money, materials, energy and other commodities.” See [REDACTED] copy incorporated into the record of proceeding. If the regulation at 8 C.F.R. § 204.5(h)(3)(v) is to have any meaning, performing duties inherent to the field of industrial engineering (such as designing and developing control systems for [REDACTED] is not necessarily a contribution of major significance in the field.

In regard to the Petitioner’s two invention disclosures for a [REDACTED] system and a [REDACTED] system, the Petitioner did not submit evidence showing that any patent

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applications had been filed for the inventions. For example, with respect to the [REDACTED] [REDACTED] the Petitioner provided a December 2012 email from [REDACTED] Licensing Associate, [REDACTED] indicating that the university's [REDACTED] had received the invention disclosure and that it was being evaluated "to determine whether [REDACTED] will retain its rights to this invention." [REDACTED] [REDACTED] email further stated: "If a decision is made to file a patent application, you will need to work closely with a patent attorney In the event that we enter into licensing discussions, you will also have to explain the technical aspects of your invention to any prospective licensees." Regardless, there is no documentary evidence demonstrating that the aforementioned inventions have affected the Petitioner's field at a level indicative of contributions of major significance.

As further evidence he meets this regulatory criterion, the Petitioner's appeal brief mentions the articles in [REDACTED] and the material on the Internet about the [REDACTED] work at [REDACTED]. The regulations have a separate criterion concerning published material about the petitioner relating to his work in the field. *See* 8 C.F.R. § 204.5(h)(3)(iii). The concerns and deficiencies regarding those articles have already been addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii). Regardless, the submitted articles and online content do not reflect that the Petitioner's work equates to original contributions of major significance in the field. For example, the articles in [REDACTED] discuss technical problems that the [REDACTED] solved for its industry partners and not specifically the Petitioner's contributions to the field. In addition, the article posted on the [REDACTED] website comments on the promise of the Petitioner's work, asserting that "the [REDACTED] team hopes that wind turbine operators will benefit greatly from [its] proactive approach." The article in [REDACTED] an apparent press release, asserts that the [REDACTED] "software is potentially groundbreaking" but does not demonstrate how it is of major significance in the field. Lastly, the content posted on the [REDACTED] and [REDACTED] Research websites is identical to the third through tenth paragraphs of the Petitioner's patent application entitled [REDACTED]. The Petitioner has not shown that this automated patent application information news release, which does not identify its author and which does not reflect independent journalistic coverage, demonstrates that his invention is a contribution of major significance in the field.

The Petitioner also points to various letters of support as evidence that he meets this criterion.² For example, [REDACTED], a researcher in the [REDACTED] at [REDACTED] in Spain, commented on the Petitioner's article entitled [REDACTED] [REDACTED] stated that "[t]he method described in [the Petitioner's] paper is both innovative and game-changing." In addition, [REDACTED] asserted that the Petitioner's method "has enabled wind farm owners to have more frequent and simplified, yet robust, wind turbine power generation health metric" that "will allow them to decide on their regular operations." While [REDACTED] further explained that the Petitioner's work "has sparked a lot of interest in the wind energy community," he did not provide specific examples of how the Petitioner's modeling approach has already affected operations a substantial number of wind farms or has otherwise risen to the level of a contribution of major significance in the field.

² We discuss only a sampling of these letters, but have reviewed and considered each one.

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Associate Professor, Department of Thermal Power and Mechanical Engineering, also mentioned the Petitioner's stating: "In his research, [the Petitioner] discovered the use of multi-regime data-driven analytics in wind turbine SCADA [supervisory control and data acquisition] data." asserted that "[the Petitioner's] seminal research in using mixture model to analyze SCADA data has helped other researchers . . . analyze the behavior of the wind turbine despite the challenging dynamic conditions." Although the Petitioner's work has garnered some independent citations and added to the pool of knowledge in his field, there is no documentary evidence showing that the Petitioner's approach has affected the field in a major way, that his method has been widely utilized to analyze the behavior of wind turbines, or that his work otherwise constitutes a contribution of major significance in the field.

Manager, System Monitoring and Control Department, Taiwan, stated:

With [the Petitioner's] multi-regime approach to wind turbine performance assessment, there is a very objective metric to justify when to recommend maintenance. Additional decision support tools may need to be added in order to determine optimal scheduling, but he has laid down the important foundation of quantifying wind turbine performance behavior.

asserted that the Petitioner "has laid down the important foundation of quantifying wind turbine performance behavior," but there is no evidence showing that his approach has substantially affected wind farm monitoring protocols or was otherwise of major significance to the field. Although the Petitioner's graduate and postdoctoral research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific or academic community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every industrial engineer who performs original research that adds to the general pool of knowledge in the field of has inherently made a contribution of "major significance" to the field.

, a consultant at and a senior expert consultant at the stated that the Petitioner "developed a novel idea of applying fault diagnostics and prognostics on a fleet of engineering assets using data-driven techniques" and that "[h]is method can be applied to various engineering assets from different industry segments." There is no evidence showing, however, that the Petitioner's method has been licensed, commercialized, or widely utilized in industry to such an extent that it equates to a contribution of major significance in the field.

Engineering Manager – Machining and Metrology, Manufacturing Technology, mentioned "the being developed [by the Petitioner]" at and asserted: "Such a systematic data-driven methodology for prognostics & health management is very

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valuable to an organization such as [REDACTED] because of the sheer number and variety of equipment that is being used at our manufacturing facilities.” While [REDACTED] mentioned “the potential huge benefits” from the Petitioner’s research area, he did not provide specific examples indicating that the Petitioner’s work has already affected the manufacturing industry at a level indicative of a contribution of major significance in the [REDACTED] field.

[REDACTED] a Senior Manufacturing Engineer with [REDACTED] and a current graduate student at [REDACTED] stated that he worked with the Petitioner at [REDACTED]. [REDACTED] further stated: “Working at [REDACTED] on behalf of the [REDACTED] [the Petitioner] developed the trademarked [REDACTED]® prognostics tools for CNC [computer numerical control] machines.” [REDACTED] does not explain how the Petitioner’s work has influenced the [REDACTED] field or industrial engineering community in a major way, or was otherwise commensurate with original contributions of major significance in the field.

[REDACTED] Adjunct Professor of Computer Science, [REDACTED] noted that the International [REDACTED] [REDACTED] Manufacturing Initiative approached the [REDACTED] to conduct “pilot projects to demonstrate preventative and predictive maintenance (PPM) technology.” [REDACTED] further explained:

[The Petitioner] designed and developed a [REDACTED] monitoring system for three important parts/components of a semiconductor etching equipment. . . . The unique contribution of [the Petitioner] is the use of a systematic [REDACTED] design scheme. . . . The impact of his research can potentially allow users to estimate the condition of an [sic] equipment including its parts in near real-time.

[REDACTED], a semiconductor industry consultant, offered similar comments about the Petitioner’s systematic [REDACTED] design scheme stating: “The impact of [the Petitioner’s] research can potentially allow users to estimate the condition of the equipment including key consumable parts in near real-time.” Although [REDACTED] and [REDACTED] both mentioned the potential of the Petitioner’s work, they did not provide specific examples of how the Petitioner’s design scheme has been widely implemented as an effective system for [REDACTED] or has otherwise been of major significance to the field.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. *Id. 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”). Without additional, specific evidence showing that the Petitioner’s work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the Petitioner has not established that he meets this regulatory criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Petitioner has documented his authorship of scholarly articles (including conference papers) in professional publications and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the evidence supports the Director’s finding that the Petitioner meets this regulatory 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.

C. Comparable Evidence

In the appeal brief, the Petitioner points to his conference presentations as comparable evidence of his extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to his occupation and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). In this matter, the Petitioner’s conference presentations were relevant to the categories of evidence at 8 C.F.R. § 204.5(h)(3)(v) and (vi), and were properly considered under those two regulatory criteria. Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the Petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). For instance, the Petitioner has specifically claimed eligibility under the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), and (vi). In addition, there is no indication that the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (viii), and (ix) do not readily apply to industrial engineers.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of 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.

Cite as *Matter of E-R-L-*, ID# 13223 (AAO Sept. 24, 2015)

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).