The Petitioner, a computer vision scientist, seeks classification as an individual of extraordinary ability in the sciences. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits a brief contending that she satisfies at least three criteria.

Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation
at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is currently a senior software engineer at Because she has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that she meets three additional criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), original contributions under § 204.5(h)(3)(v), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

\footnote{While the Petitioner previously claimed eligibility for the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), she does not continue to do so on appeal, nor does the record support a finding that she meets it. Accordingly, we will not further address this criterion in our decision.}
A. Evidentiary Criteria

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).

The Petitioner contends that she meets this criterion based on her work at the conference in 2016. Further, the Petitioner indicates that her award is not limited to students and postdoctoral researchers but “open to scientists across the globe . . .” and lists two other individuals who have previously received such awards.

The record contains a letter from chairperson for who stated that the conference is “a gathering of the best research minds in the field of from all over the world,” and “is an internationally renowned conference . . .” In addition, the Petitioner provided screenshots from website regarding the 2016 conference. The documentation relates to the conference generally, and does not establish that the awards are recognized for excellence outside of the conference. Further, the Petitioner lists two other individuals who have received awards and submitted screenshots from website reflecting the 2015 winners. We are not persuaded, however, by the Petitioner’s argument that the receipt of awards by others who she asserts are acclaimed in the field establishes the national and international recognition of the awards themselves. For these reasons, the Petitioner did not demonstrate that she meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner served as the chairperson for the conference. Accordingly, the Director determined that the Petitioner satisfied this criterion, and we agree with that finding.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner argues on appeal that she provided “ample evidence” to meet this criterion, and that her discoveries have been implemented in her field, as indicated by a pending patent and recommendation letters. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.
As it pertains to her pending patent, the Petitioner submitted a provisional patent application for her invention or idea. In general, a patent recognizes the originality of an invention or idea but does not necessarily establish that it is a contribution of major significance in the field. While a few of her recommendation letters\(^2\), such as (professor at the university), generally indicate that her concept “is currently submitted for patenting,” they do not further explain how it has impacted or influenced the field to show a contribution of major significance.

The record also contains several recommendation letters that describe the Petitioner’s contributions but do not establish that they are of major significance in the field. While her letters provide examples of instances where her work has been implemented, they do not show that her contributions have been majorly significant. For example, principal at stated that the Petitioner worked for him as a research intern, and she completed the project, based on a research grant from the City of Canada. Although indicated that is currently using her algorithm to count people in stations, he did not establish that the Petitioner’s work has been widely applied in the field to show a contribution of major significance. See Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

In addition, professor at the discussed the Petitioner’s work on a project, sponsored by the entity in developing an automated technique for estimating power consumption by computers in buildings by processing visual imagery. stated that “[s]uccessful completion of the project would result in development of an automatic robotic system” and “[t]his in turn would save millions of government money” (emphasis added). Although discusses the impact of the Petitioner’s project in terms of future applicability, he did not demonstrate the influence that the Petitioner’s work has already had on the field to indicate an existing contribution of major significance.

Similarly, chief executive officer at stated that the Petitioner developed a “radical ‘adaptive background subtraction’ algorithm pivotal to the separation of cars from their background” and indicated her algorithm has been embedded in thermal imaging sensors that are being Beta tested in four states. Here, did not show that the Petitioner’s work has been widely applied throughout her field but rather that it is being tested in select areas. Thus, the actual significant impact of her work has yet to be determined in the field. In fact, vice president of program development and sales for stated that “[t]his product will be used by in the US, and throughout the world,” and “this technology will also be adapted for predicting road conditions, perimeter security and presence detection markets” (emphasis added). Again, while discusses her work in...
terms of potential or possible applicability, he did not establish that her work is already being extensively utilized in the field.

Some of the Petitioner’s recommendation letters indicate that the Petitioner’s research has been published in journals and presented at conferences. For instance, an associate professor at the stated that the Petitioner “develop[ed] algorithms for tracking and counting which were published in 2013, 2014 and 2015 respectively.” did not, however, discuss how the Petitioner’s publications and presentations are considered unusually influential or how they impacted the field in a substantial way. Without further supporting evidence, such as documentation showing that her published material has been extensively cited, the Petitioner did not establish that her written or presented work significantly influenced the field. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” Kazarian v. USCIS, 580 F.3d 1030, 1036 (9th Cir. 2009), aff’d in part, 596 F.3d 1115. In 2010, the Kazarian court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122.

The letters considered above primarily contain attestations of the Petitioner’s status in the field without providing specific examples of how her contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. Kazarian, 580 F.3d at 1036, aff’d in part 596 F.3d at 1115. In 2010, the Kazarian court reiterated that the U.S. Citizenship and Immigration Services’ (USCIS’) conclusion that the “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. Moreover, USCIS need not accept primarily conclusory statements. 1756, Inc. v. The U.S. Att’y Gen., 745 F. Supp. 9, 15 (D.C. Dist. 1990). For these reasons, the Petitioner did not demonstrate that she meets this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner provided evidence that she authored four scholarly articles in professional journals, such as the Therefore, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

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).

The Petitioner contends that she meets this criterion based on her role with As support for this contention, she references three recommendation letters, two of which were discussed above from and and another from senior software engineer at indicated that the Petitioner is a team lead and “plays an absolutely essential
role, not just to the project, but to the company as a whole.” In addition, discussed why the Petitioner was selected for the position and stated that her expertise “directly influences our company’s future.” Further, according to the Petitioner “is currently the most knowledgeable person in our company, and also the only expert in the field of and .”

In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Here, the recommendation letters do not demonstrate that the Petitioner performed in a leading role with As a senior software engineer, the Petitioner did not establish where her position fits in the overall hierarchy of the company or how her role compares to others, such as who is the chief executive officer of the company. Without supporting evidence, such as an organizational chart, the Petitioner did not establish she performed in a leading role for

As it relates to a critical role, the authors stated that the Petitioner’s role was “critical” or “essential.” However, repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff’d, 905 F. 2d 41 (2d. Cir. 1990); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Although the authors value the Petitioner for her contributions in the projects in which she was involved, the letters do not establish that she performed in a critical role for the company as a whole. The Petitioner, for instance, did not show that she was responsible for the success of or that her contributions impacted the company’s overall reputation or status in the field. For instance, while the Petitioner worked on a project that is being tested in several states, as discussed above, the record does not show that garnered attention or received accolades from the project. As such, the Petitioner did not demonstrate that she performed in a critical role for

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires a petitioner to establish that her role is for organizations or establishments that have a distinguished reputation. The Petitioner provided press releases and business wires reflecting the work on various projects. In addition, the Petitioner submitted articles regarding the installation of sensors in different areas. Although is credited in the articles for supplying the technology, the evidence does not indicate that the company enjoys a distinguished reputation. The articles are not about do not otherwise feature the company, and do not discuss its status or standing in the field among other related companies. Therefore, the Petitioner did not demonstrate that enjoys a distinguished reputation. For these reasons, the Petitioner did not show that she satisfies this criterion.

B. Summary

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise
that we have reviewed the record in the aggregate, concluding that it does not support a finding that
the Petitioner has established the level of expertise required for the classification sought.

C. O-1 Nonimmigrant Status

The record reflects that the Petitioner received O-1 status, a classification reserved for
nonimmigrants of extraordinary ability. Although 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 which is adjudicated based on a different standard –
statute, regulations, and case law. Many Form 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
Co. Ltd., 724 F. Supp. at 1103. Furthermore, our authority over the USCIS service centers, the
office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court
of appeals and a district court. Even if a service center director has approved a nonimmigrant
petition on behalf of an individual, we are not bound to follow that finding in the adjudication of
another immigration petition. Louisiana Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL
282785, at *2 (E.D. La. 2000).

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that she qualifies as an individual of
extraordinary ability.

ORDER: The appeal is dismissed.

Cite as Matter of S-M-, ID# 591113 (AAO Oct. 18, 2017)