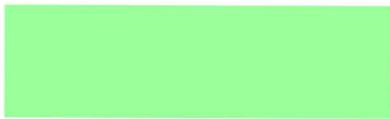


(b)(6)

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



U.S. Citizenship
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Services

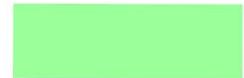


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Office: NEBRASKA SERVICE CENTER

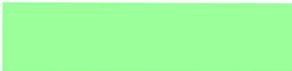
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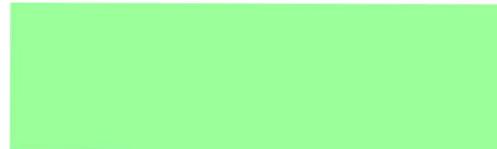
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner filed the petition on April 17, 2012, and must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). On April 19, 2012, the director issued a request for evidence. After considering the petitioner’s response, the director denied the petition on July 2, 2012. The petitioner filed an appeal on July 26, 2012, indicating that counsel would submit a brief and/or additional evidence within 30 days. Counsel submitted the brief and additional evidence on August 21, 2012. Counsel has subsequently supplemented the record on November 9, 2012, March 21, 2013, April 12, 2013 and May 1, 2013.

In the August 2012 appellate brief, counsel asserts that the petitioner meets at least three of the criteria specified in the regulations and is eligible as an alien of extraordinary ability. Furthermore, counsel states that the director improperly defined the petitioner’s field of endeavor by focusing on the word “biology” rather than biological engineering, which counsel asserts integrates engineering with life sciences. The director correctly characterized the petitioner’s field as biological engineering throughout the decision and only focused on the biological aspect of that field under the leading or critical role criterion, questioning whether one of the petitioner’s employers engaged in biological engineering. That factor, however, was not the decisive factor in the director’s conclusion that the petitioner did not meet that criterion. This decision will address counsel’s remaining assertions below.

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) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

regulatory requirement of three types of evidence (as the AAO concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

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

The petitioner did not claim that he met this criterion or submit evidence relating to this criterion along with the Form I-140 petition and accompanying documents. The petitioner then failed to claim eligibility for this criterion and submit relevant evidence in response to the director’s Request for Evidence (RFE). Counsel also failed to claim this criterion in the appellate brief but submits evidence for the first time as part of a package of “supplemental evidence” on April 12, 2013, approximately six months after the submission of the appellate brief. The new evidence consists of an April 5, 2013 letter admitting the petitioner as a member of the [REDACTED]

The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). In this matter, the petitioner was on notice of the membership criterion from the regulation and the director’s RFE. Although the AAO maintains *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *Matter of Soriano*, 19 I&N Dec. at 766.

Regardless, the petitioner’s membership postdates the April 17, 2012 filing date of the petition. The petitioner must establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Furthermore, while the petitioner submitted evidence regarding the academy’s main tasks and structure, the petitioner did not submit the bylaws or other official information listing the membership requirements. The admission letter merely references the recommendation of two members, which does not establish either that the academy requires

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

outstanding achievements or that nationally or internationally recognized experts judge those achievements.

In light of the above, the petitioner has not submitted evidence that satisfies this criterion.

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

Initially, the petitioner submitted four patent reviews posted on www.patent.km.ua, only two of which mention the petitioner by name. In response to the director's RFE, the petitioner submitted a letter from [REDACTED] on behalf of the editorial board, discussing the nature of the website. The director determined that the petitioner failed to satisfy this criterion under 8 C.F.R. § 204.5(h)(3)(iii). On appeal, counsel asserts that four articles submitted along with the RFE response meet the requirements under the regulation.

On appeal, counsel relies on a note within the Foreign Affairs Manual (FAM) for her position that the published material need only be about the petitioner's work. The note paraphrases the regulation at 8 C.F.R. § 204.5(h)(3)(iii) but provides no specific policy guidance. The State Department publishes the FAM while, as noted in the FAM, the Department of Homeland Security (through USCIS) is the department responsible for adjudicating the benefit sought. The plain language of the regulation, which is binding on all USCIS employees, requires that the published material be "about the alien . . . relating to the alien's work in the field." Compare 8 C.F.R. § 204.5(i)(3)(i)(C). USCIS has issued its own guidance on section 203(b)(1)(A) of the Act. The memorandum "Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator's Field Manual (AFM)* Chapter 22.2 *AFM* Update AD11-14," PM-602-0005.1 (Dec. 22, 2010), page 7, states: "The published material should be about the alien relating to his or her work in the field."

Counsel maintains that the articles discuss technologies that the petitioner developed. However, two of the articles do not even mention the petitioner by name and therefore, cannot meet the plain language requirement that the published material be "about" the petitioner. While counsel has asserted that the petitioner developed the mentioned technologies, the assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). One of the articles references the petitioner's name once and the final article includes links to some of the petitioner's written work that were previously presented or included on the website. Articles that briefly mention the petitioner or mentions other works that he has authored are not "about" the petitioner relating to his work. The petitioner has not established that these articles meet the plain language requirement that the material be about the petitioner as set forth at 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, the petitioner has not established that the website that posted all of the above-mentioned articles constitutes a professional or major trade publication or other major media. While Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every

Internet site has the same degree of national or international influence. Anyone can create a website and post articles. The mere act of posting an article online does not transform what is otherwise an individual promotional website into major media.

In his first letter, Mr. [REDACTED] asserts that the website is '[REDACTED]' and is '[REDACTED]' His letterhead, however, indicates the website is his own and that he is a private attorney registered with the state. In a subsequent letter, which the petitioner submits on appeal, Mr. [REDACTED] asserts that experts in academia review the articles prior to posting. Mr. [REDACTED] acknowledges, however, that the site is "[REDACTED]'s web-site." While Mr. [REDACTED] asserts that the website (1) was created as a platform and forum for professionals, (2) is one of the most visited sites in the Ukraine, (3) is in constant communication with the Ukrainian government's regional officials, and (4) is '[REDACTED]' USCIS need not rely on the self-serving assertions of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (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). The record also includes evidence of the visits to the website. The petitioner, however, has not compared that data with sites of professional, major trade publications or other major media. Consequently, the petitioner has not established that this private attorney's website constitutes a professional or major trade publication, or other major media.

On May 1, 2013, counsel submitted additional "supplemental evidence" consisting of an article in [REDACTED] titled [REDACTED] First, the article appears in the fourth volume of the journal for 2012 and the record lacks evidence that it was published prior to the filing date, April 17, 2012. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, the translation only translates a portion of the article, which does not comply with 8 C.F.R. § 103.2(b)(3). While the authors of the article refer to the petitioner as a '[REDACTED]' the translated portions of the article are insufficient to demonstrate that the article, as a whole, is "about" the petitioner.

Accordingly, the petitioner has failed to satisfy the plain language requirements of 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.

The petitioner submitted two letters from Mr. [REDACTED] inviting the petitioner to prepare articles for Mr. [REDACTED] website. One letter invites articles on a number of subjects while the second letter invites the petitioner to review the mechanical engineering work of [REDACTED] The petitioner also submitted his article posted on Mr. [REDACTED]'s website pursuing a desire "to continue our professional dialogue with" Mr. [REDACTED]'s website. In response to the director's RFE, the petitioner submitted summary translations of additional articles on Mr. [REDACTED]'s website and a statement from the petitioner explaining that he was intrigued by Mr. [REDACTED]'s work,

which led the petitioner to provide his professional opinion and begin a professional debate with Mr. [REDACTED]

The director determined that the petitioner failed to satisfy this criterion under 8 C.F.R. § 204.5(h)(3)(iv). On appeal, counsel asserts that the director mischaracterized and incorrectly evaluated the evidence submitted for consideration under this criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the beneficiary has served as “a judge” of the work of others. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of professional discussion in the format of posted articles on a private website. As the petitioner has only documented informal professional discussions rather than participating as a judge of the work of others, the petitioner has not satisfied the plain language requirements of this criterion.

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

Counsel asserts that the petitioner has made contributions of major significance through his innovations with water treatment technologies, medical projects, light emitting systems and technologies, and food composite technologies. Counsel further asserts that the petitioner has also made a contribution of major significance in the field by advancing [REDACTED]

[REDACTED] The director determined that the petitioner failed to meet the criterion under 8 C.F.R. § 204.5(h)(3)(v). Counsel asserts that the director solely considered the expert letters in making his determination and failed to consider that companies have expressed interest in pursuing the petitioner's patented or patent-pending innovations..

According to the Department of Labor's *Occupational Outlook Handbook (OOH)*, available at <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2> accessed July 12, 2013 and incorporated into the record of proceeding, mechanical engineers typically do the following:

- Analyze problems to see how a mechanical device might help solve the problem;
- Design or redesign mechanical devices, creating blueprints so the device can be built;
- Develop a prototype of the device and test the prototype;
- Analyze the test results and change the design as needed; and
- Oversee the manufacturing process for the device.

The *OOH* further asserts that biomedical engineers “may design instruments, devices, and software; bring together knowledge from many technical sources to develop new procedures; or conduct research needed to solve clinical problems.” See <http://www.bls.gov/ooh/architecture-and-engineering/biomedical-engineers.htm#tab-2>, accessed July 12, 2013 and incorporated into the record of proceeding. Thus, designing devices and developing prototypes are commensurate with the

petitioner's employment in his field. Not every mechanical engineer who is competent and, thus, designs devices and develops prototypes that are useful to the engineer's employer or customers, has made a contribution of major significance in the field. At issue is whether those designs and prototypes have influenced any field of engineering at a level consistent with contributions of major significance in the field.

The petitioner submitted several patent applications. While patents, when approved, demonstrate the originality of the work described in the applications, patents are not, in and of themselves, evidence that the innovations are contributions of major significance in the field. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Assoc. Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. In support of the significance of the innovations described in the patent applications, the petitioner submits letters and, in response to the RFE, contracts with private companies.

The letters from [REDACTED] Ph.D., Chief Structural Engineer for [REDACTED] Ph.D., [REDACTED] and [REDACTED] review a specific device or technologies in response to an invitation without explaining how that device or technology has already impacted the field or the author's work. For example, Dr. [REDACTED] asserts that the petitioner's light emitting technology, consisting of a laser diode chip, "replaces the well known [sic] LED technology and provides significantly improved illumination parameters" and is applicable to many fields. Dr. [REDACTED] however, provides no examples of any industry using the petitioner's diodes to replace LED technology or other independent engineers pursuing this line of research based on the petitioner's work.

The letters from [REDACTED] former Vice President of [REDACTED] Ph.D., Senior Chemist at [REDACTED] Ph.D., Chemistry Research Associate at [REDACTED] Ph.D., General Director of [REDACTED] President of [REDACTED] [REDACTED] President of [REDACTED] of Ukraine, and [REDACTED] [REDACTED] are vague in articulating the impact that the petitioner and his work has had on the field and make conclusory claims. For example, while Mr. [REDACTED] asserts that he supports the petition in the classification sought, he characterizes the petitioner's models as "useful," "important" and as having "intrinsic merit." Mr. [REDACTED] provides no examples of any company using the petitioner's models and does not assert that [REDACTED] is doing so. Similarly, Dr. [REDACTED] asserts that by using the petitioner's technology, "the quality of water can be tested and treated, if necessary, on a spot, at the source, without the delay of lab testing." Dr. [REDACTED] does not provide any examples of water testing currently using the petitioner's technology. Mr. [REDACTED] affirms the importance of the petitioner's innovations but does not suggest that his equity company has invested in any of those innovations. Merely 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. sup. 9, 15 (D.C. Dist. 1990).

Dr. [REDACTED] General Director of the [REDACTED], discusses the petitioner's work on [REDACTED] speculates that the petitioner's advancements with these processes "could facilitate an increase in idea and subsequently patent generation which will bring enormous benefits across the board in every field." While Dr. [REDACTED] asserts that he plans to implement the petitioner's recommendations, he does not provide any examples of other independent inventors using the petitioner's recommendations or otherwise explain how the petitioner's work on [REDACTED] have already impacted his field. The petitioner has not provided any widespread public commentary (which necessarily implies commentary beyond that of one private patent attorney's website) or peer-reviewed journal articles that reference the petitioner's work on [REDACTED] as a basis for the work reported in those articles.

Dr. [REDACTED] President and Owner of the [REDACTED] asserts that the petitioner has inspired him and "other high level professionals in alternative medical Technologies [sic]." Dr. [REDACTED] provides an appendix listing several alternative medicine projects, many of which the appendix characterizes as "proposed technology." Dr. [REDACTED] does not profess any engineering expertise and he does not explain how the petitioner's designs constitute contributions of major significance in any field of engineering.

The April 12, 2013 appellate submission contains an undated "Letter of Recommendation – Reference" from [REDACTED] Chief Physician of the [REDACTED] affirming that the institution used the petitioner's computer simulation methodology to test an orthopedic device that others invented. The letter does not indicate that the institution utilized the petitioner's methodology prior to the date of filing on April 17, 2012 or that the usefulness of the computer simulation to one medical institution is indicative of or consistent with a contribution of major significance in any field of engineering.

[REDACTED] Head of the Faculty of [REDACTED] and an associate professor in pedagogy in [REDACTED] praises the petitioner's "development of complex systems of control over the parameters and productivity of technologically complex innovational products at earlier stages of their development with parallel scheme of constructing system and methodology of development of algorithm of immigration of their working eyole [sic]." More specifically, Dr. [REDACTED] asserts that the petitioner's work related to the ecology of water "drew keen attention of the specialists and scientists of our University, many of whom are going to utilize these projects in their everyday practical work." Dr. [REDACTED] further asserts that he and his colleagues are "planning to publish articles" on the petitioner's system of horizontal and vertical integration of innovational solutions on their internet sites as well as in professional magazines and in their lectures. Dr. [REDACTED] while asserting that he is an inventor, does not claim any expertise or education in biological engineering. Regardless, plans to incorporate the petitioner's work into future published articles are insufficient evidence that the

petitioner has already had an impact in the field. Dr. [REDACTED] does not assert that he and his colleagues have already cited the petitioner's work in any peer reviewed published article or patent application.

Significantly, several pages of Dr. [REDACTED]'s letter are identical to letters from [REDACTED] Patent Attorney and Professor of [REDACTED] Supervisor and Consultant of the [REDACTED] at the [REDACTED]. The use of virtually identical language suggests the language in each respective letter is not the author's own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). The identical language includes the statements that the author and his colleagues plan to utilize the petitioner's work and publish articles based on his findings. As with Dr. [REDACTED]'s letter, the other two authors do not support their assertions with published peer-reviewed articles or patents that cite the petitioner's work as a reference.

[REDACTED] President of [REDACTED] and one of the petitioner's co-inventors on several patent applications that [REDACTED] filed, asserts that [REDACTED] "is in the process of entering into agreement[s]" with companies in Germany, Ukraine, the United States, and Sweden. While Ms. [REDACTED] affirms that these companies are interested in the petitioner's innovations, she does not assert that these companies have already licensed or otherwise adopted the petitioner's technology. She also fails to explain how industry interest in the petitioner's designs has impacted any field of engineering. Simply producing a product or design that can compete in the marketplace is not necessarily a contribution of major significance in any field of engineering.

[REDACTED] President of [REDACTED] discusses the petitioner's work with [REDACTED] and [REDACTED] and states (grammar and capitalization as it appears in the original):

In combination with Developed by [the petitioner] Development Strategy all this Original and deep professional instruction system is the best instrumentation for increasing the development process in our company and is example of significant Intrinsic Merit for our development process organization.

[REDACTED] is saying that [REDACTED] has already adopted the petitioner's processes instead of just having evaluated them for future use, Mr. [REDACTED] does not explain how adopting the petitioner's processes has impacted [REDACTED]

The petitioner did provide more specific letters. [REDACTED] Senior Technical Director of [REDACTED] explains that the company is "a world leader in the milk production equipment industry." Mr. [REDACTED] asserts that he has closely followed the work of [REDACTED] relating to "the advancement waste water treatment, regeneration and recirculation." Mr.

asserts that the petitioner “is one of the inventors of this technology” and a “key person in the feasibility study” testing the technology. In response to the RFE, the petitioner submitted a contract between . The undated contract is for “the technical evaluation of the possibility to measure pH in water by use of a coil.” Appendix A is incomplete with regard to when the project is due. The record contains no results from this evaluation. Ultimately, Mr. merely speculates that the petitioner’s technology “when developed, will dramatically improve the milking industry by offering guaranteed quality of dairy products to the public while, at the same time, increasing the efficiency of milk farms and dairy products manufacturing facilities.” Even on appeal, Mr. asserts only that the field of cow’s health “can be revolutionized” and that real time monitoring of milk “will dramatically improve the economy and the quality of the dairy farming business.” While Mr. asserts that initial testing of the petitioner’s innovation “produced very promising results,” such results are not indicative of a contribution of major significance in any field of engineering. Speculation as to a potential future impact based on promising results is insufficient to establish that the petitioner has already made contributions of major significance in the field.

Similarly, General Director of in Germany, asserts that his company “has exemplified hundreds of projects from around the world, highlighting projects of independent experts believed to be the most interesting and having the most potential to succeed.” Mr. further asserts: “ and the company have decided to create, for the implementation and commercialization of aforementioned new projects, an [sic] new company in Germany and invest in it all necessary tools and resources.” Mr. indicates that the new company will focus on food composition, integrated water treatment and innovative non-contact dynamic control and monitoring of fluids, including bio-fluids, with electromagnetic resonance. He concludes: “Since [the petitioner] is a key figure in all these projects, his presence and involvement is crucial for the successful implementation and development of these projects.” The initial filing included a letter from Mr. referencing the prospective signing of a confidentiality agreement. In response to the RFE, the petitioner submitted the organizational documents for dated May 15, 2012, which reveal that the founders are and that the technological basis for the company are the petitioner’s inventions. The organizational documents, however, postdate the filing of the petition, the date as of which the petitioner must establish his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, Mr. does not assert that the innovations seeks to develop have already impacted the petitioner’s field. Rather, Mr. speculates as to their future importance.

The record also includes a letter from Research and Development/Quality Assurance Director at addressed to expressing an interest in evaluating the feasibility of certain technology. The record contains no evidence relating to the ultimate results of this study or even that did, in fact, form the proposed joint venture to conduct the study. Similarly, expressed an interest in licensing technology from . The record, however, contains no evidence that did, in fact,

license the technology or that the licensing agreement is indicative of a contribution of major significance in any field of engineering rather than simply the design of a marketable product.

With the April 12, 2013 appellate submission, the petitioner submits a [REDACTED] [REDACTED] The translation discusses the petitioner's thesis and states:

The research conducted formed the basis of a system and procedure for the development and design of the special process equipment and instruments for flexible automated process systems that were successfully put into production at the facilities of the [REDACTED] concerns (Sweden), the [REDACTED] concern Israel and the United States (US), the facilities of the [REDACTED] (US), and many others, including the facilities of the [REDACTED] (US)."

The certificate does not explain how [REDACTED] has firsthand knowledge of this information and, as discussed above, the letters from the above institutions do not confirm that, as of the date of filing, they had already utilized the petitioner's methodologies at a level consistent with contributions of major significance in any field of engineering.

Within the May 1, 2013 appellate submission, the petitioner submitted a letter from [REDACTED] President of the [REDACTED] recognizing the strategic importance of the petitioner's proposed development entitled "Innovative modification of fuel mixtures based on dynamic dissolution of flammable gases in liquid hydrocarbon fuel." This letter, dated April 23, 2013 and referencing the petitioner's proposal, does not establish that, as of the date of filing on April 17, 2012, the petitioner had already made contributions of major significance in any field of engineering.

The remaining letters discuss the prospective nature of various technologies and their impact and while complimentary of the petitioner, are insufficient to demonstrate an impact on the field of biological engineering on the whole.

Overall, general statements regarding the importance of endeavors are normally insufficient. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based on this review. Ultimately,

evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition.

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 International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r 1972)).

On appeal, counsel maintains that the willingness of educational institutions to use the petitioner's work as part of the teaching is sufficient to satisfy the plain meaning requirements of the regulation. The letters attesting to the educational function of the petitioner's work, however, carry minimal weight because as noted above, large portions of the letters have virtually identical language and only vaguely suggest that the authors may reference the petitioner's work during a future lecture.

The record reflects that the petitioner is a prolific inventor with several patent applications pending as well as three patents. Some of the petitioner's innovations have garnered some interest in the field, with three companies, after the date of filing, expressing an interest in testing or developing the petitioner's innovations. The petitioner has not, however, established that he has already had an impact in his field indicative of or consistent with contributions of major significance in the field. Accordingly, the petitioner has not satisfied the regulatory requirements for this criterion at 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.

The initial evidence consisted of articles posted on Mr. [REDACTED]'s website. As discussed above, the petitioner has not established that the website constitutes a professional or major trade publication or other major media. Moreover, scholarly articles are normally in journals or publications that have a rigorous peer-review process for submissions. The website is not a journal or publication. As noted above, anyone can create a website and post articles. Mr. [REDACTED] asserts that all articles posted on the site are subject to a multiple step, peer-review process. But much like the statement asserting that the website constitutes major media, USCIS need not rely on the self-serving assertions of the publisher. *Braga v. Poulos*, No. CV 06 5105 SJO. Thus, the articles published on the website do not constitute scholarly articles, as contemplated by the regulation.

Following the submission of the Form I-290B and the appeal brief, counsel submitted new, supplemental evidence under this criterion on several occasions. The evidence received on January 31, 2013, consists of printed webpages indicating that some of the petitioner's articles are posted on the Site of the [REDACTED] and the website for [REDACTED] a radio station in Ukraine. The evidence received on March 21, 2013, consists of an article in the journal [REDACTED]. The evidence received on April 13, 2013, consists of an article in the scientific journal [REDACTED] titled, '[REDACTED]'

The dates on the printed webpages and the numbering and dating system of [REDACTED] and [REDACTED] as reflected in the respective translations, fail to indicate the specific dates of the alleged publication. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner in this instance has failed to demonstrate that the supplemental evidence existed at the time of filing. Moreover, the article in *Inventor and Innovator* is an article on a strategy for submitting an application to the U.S. patent office and is not an article in the petitioner's field of biological engineering.

Accordingly, the petitioner has failed to satisfy the regulatory requirements pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner failed to claim this criterion before the director and submits evidence under this criterion for the first time as part of a "supplemental evidence" package received by this office on March 21, 2013, months after the submission of the appellate brief. As noted earlier, the petitioner must claim every criterion that the petitioner would like to be considered before the director. In instances when the petitioner was notified of the types of evidence that are required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766. Moreover, counsel fails to explain how the trade show where [REDACTED] exhibited products "based on the original inventions" of the petitioner constitutes an artistic exhibition or showcase. Further, the trade show was in 2013 and, thus, postdates the filing of the petition on April 17, 2012, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Accordingly, the petitioner has failed to satisfy the regulatory requirements pursuant to 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. at 306. Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Initially, the petitioner submitted a letter from [REDACTED] Chief Financial Officer of [REDACTED] asserting that the petitioner provides the company with unique support using his knowledge and design models and that his knowledge and services play a critical role for the company. The director determined that the petitioner failed to satisfy the requirements of this criterion, in part, because [REDACTED] has not earned a distinguished reputation. On appeal, counsel asserts that the director failed to specify the evidence on which he relied in determining that [REDACTED] does not have a distinguished reputation. It is the petitioner's burden, however, to submit evidence establishing every element of a given criterion, including the distinguished reputation of the organization or establishment for which he has performed in a leading or critical role. Ms. [REDACTED] asserts that [REDACTED] is a successful company with sales and revenues of approximately \$4,000,000. However, the petitioner has not included documentary evidence indicating that [REDACTED] is a company marked by eminence, distinction, or excellence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, the petitioner has only claimed that he has played a critical or leading role for one company, [REDACTED]. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of "organizations" or "establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)."

³ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on May 1, 2013.

Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.⁴

Therefore, the petitioner has failed to satisfy the regulatory requirements pursuant to 8 C.F.R. § 204.5(h)(3)(viii).

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

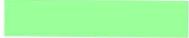
The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁴ *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

⁵ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains 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* section 103(a)(1) of the Act; section 204(b) of the Act; 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).



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.