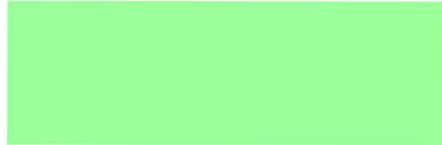


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE:

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Office: TEXAS SERVICE CENTER

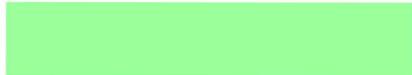
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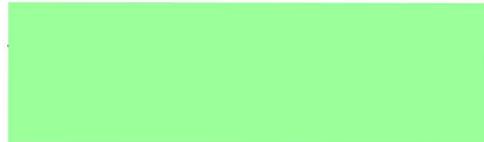
Petitioner:

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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on February 6, 2012. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal on April 4, 2013, pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v). However, the AAO reopened the decision on motion on June 10, 2013, pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), and the matter is again before the AAO. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as an executive director in clinical research. The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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.

On appeal, counsel claims that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## 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

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(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. 723 101<sup>st</sup> 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.<sup>1</sup> 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 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

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<sup>1</sup> 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).

A. Evidentiary Criteria<sup>2</sup>

*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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation 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.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

At the initial filing of the petition, counsel claimed the beneficiary’s eligibility for this criterion based on purported memberships with nine associations. In support of the claim, the petitioner submitted screenshots from the associations’ websites and a letter stating that the beneficiary was a member of nine associations, with brief descriptions of each association. However, the petitioner failed to submit any documentary evidence supporting its claims that the beneficiary was a member of any of the associations. 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)). In addition, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel submitted letters regarding the [REDACTED]. The petitioner also submitted a screenshot from [REDACTED] website that reflected general information regarding the association. In addition, the petitioner submitted a letter from [REDACTED] Editor-in-Chief, who stated that the beneficiary is a member of the [REDACTED], a board established to contribute to and support the publication of [REDACTED] bimonthly publication. Ms. [REDACTED] further stated that the beneficiary “was selected for appointment (to the [REDACTED] in December 2011.” The director found the evidence insufficient to meet the plain language of the regulation for this criterion.

<sup>2</sup> On appeal, the petitioner does not claim that the beneficiary meets any of the regulatory categories of evidence not discussed in this decision.

On appeal, counsel expresses his agreement with the director's determination that [REDACTED]'s "general membership does not require evidence of excellence and recognition in the field," but then argues that the beneficiary's "membership in the [REDACTED] is held to a different standard." Counsel does not, however, make any further claim or argument regarding the beneficiary's membership with the [REDACTED] or any of the other initially claimed associations. Therefore, these claims are abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when he failed to raise them on appeal to the AAO).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "the alien's membership in associations." As such, the beneficiary's membership in [REDACTED] is the relevant issue regarding eligibility for this criterion rather than the beneficiary's nomination to the [REDACTED] within [REDACTED]. Regarding the beneficiary's membership with [REDACTED], Ms. [REDACTED] stated that "paid membership in [REDACTED] is available to any individual who is actively involved in the clinical research." However, as counsel concurred, this single entry requirement is not reflective of outstanding achievements consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Even if, as counsel argues, the [REDACTED] is considered as a separate membership, which has not been established, Ms. [REDACTED] stated that candidates for the [REDACTED] must "demonstrate achievements in their field and endure an in-depth application process." The petitioner has not established that "achievements in the field" equate to "outstanding achievements" and therefore that [REDACTED] requirements for [REDACTED] candidates meet the plain language of this regulatory criterion. Moreover, Ms. [REDACTED] stated that "[REDACTED] membership is attained solely by nomination and subsequent appointment by the Chair of the [REDACTED] Board of Trustees." However, Ms. [REDACTED] failed to identify the Chair and [REDACTED] Board of Trustees and whether they are recognized national or international experts in the field as required pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, counsel claims that [REDACTED] the past Chair of the [REDACTED] approved the beneficiary's membership, and [REDACTED] as members of the nominating committee approved the beneficiary's [REDACTED] membership. Counsel further asserted that "both the Chair and members of the nominating committee are recognized as international experts in the field of clinical research." However, counsel failed to submit any documentary evidence to support his assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). As such, the petitioner failed to establish that membership with [REDACTED] requires outstanding achievements, as judged by recognized national or international experts consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Moreover, as indicated in the director's decision, the petition was filed on September 12, 2011, and the beneficiary's appointment to the [REDACTED] occurred after the filing of the petition. 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). A petition cannot be approved at a future date after the petitioner becomes

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eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Thus, even if the petitioner had established that the beneficiary's appointment to the [REDACTED] was, in fact, "membership," that his appointment was based upon outstanding achievements in his field, and that it was judged by recognized national or international experts, as the appointment occurred after the time of filing, it cannot be considered.

Finally, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in more than one association. Counsel claims the beneficiary's eligibility for this criterion based on his membership with one association. 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)." Thus, 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. *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). The petitioner's claim of the beneficiary's membership in a single association is not sufficient to meet the plain language of this criterion.

The beneficiary's editorial experience on the [REDACTED] while insufficient to establish eligibility under this criterion, is relevant to the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and will be considered again under that criterion. Evidence relating to or even meeting the judging criterion is not presumptive evidence that the beneficiary also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least three separate criteria.

The petitioner failed to establish that the beneficiary meets this criterion.

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

The director determined that the petitioner failed to demonstrate the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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."

In counsel's table of contents to his appellate brief, he indicates that "[m]aterial has been published about [the beneficiary] in professional or major trade publications, or other major media, relating to his work in the field of endeavor," and the table of contents indicates that the discussion is on page 16 of the brief. However, a review of counsel's entire brief, as well as page 16, fails to reflect any discussion of the beneficiary's eligibility for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), nor is there any discussion regarding how the director erred for this criterion. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11<sup>th</sup> Cir. 2009). Therefore, these claims are abandoned. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*9 (plaintiff's claims abandoned when he failed to raise them on appeal to the AAO).

Accordingly, the petitioner failed to establish that the beneficiary 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.*

In the director's decision, the director determined that the beneficiary meets this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." Based on a review of the record of proceeding, the petitioner submitted sufficient documentary evidence to establish that the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner established that the beneficiary meets this 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 failed to establish the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related 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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

A review of the record of proceeding reflects that the petitioner did not originally claim the beneficiary's eligibility for this criterion. However, in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner claimed the beneficiary's eligibility and submitted additional documentation. On appeal, counsel refers to a letter from [REDACTED] who indicated that he was requested to comment on the extent of the

beneficiary's experience. It does not appear that Mr. [REDACTED] was aware of the beneficiary prior to being contacted and his determination that the beneficiary is an alien of extraordinary ability is not based on his prior knowledge of the beneficiary or his work but merely on the evaluation of the documents given to him.

Regardless, Mr. [REDACTED] stated that the beneficiary "is a very unique individual with unusual skill sets seldom seen in a healthcare executive." However, Mr. [REDACTED] failed to indicate how the beneficiary's skills are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the beneficiary has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the beneficiary's skills are unique, the classification sought was not designed just to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

Furthermore, Mr. [REDACTED] claimed that the beneficiary's "clinical and case management pathways for CHF, COPD, CAD, diabetes and blood pressure using IT support has helped to reduce ER visits, hospital admissions and readmissions." However, Mr. [REDACTED] failed to explain how he came to his conclusion or cite to any examples that supported his claims.

In addition, Mr. [REDACTED] claimed that the beneficiary's "contributions to the [REDACTED] model is one in which others *could* follow his lead in building an [REDACTED] where ever it might be needed [emphasis added]," that "his work *may* well help lead the next generation of [REDACTED] [emphasis added]," and "his work in Maryland *may* help lead the way for others to replicate his work [emphasis added]." However, a petitioner cannot establish eligibility under this classification based on the expectation of future contributions. Given Mr. [REDACTED]'s description of the beneficiary's work in terms of future applicability and determinations that may or may not occur at a later date, it appears that the beneficiary's work has not had impact or been implemented beyond his employer. 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. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Mr. [REDACTED]'s letter speculates on the future potential of the beneficiary's work and the impact that may result from his work, rather than how his work already has made a contribution of major significance in the field. The assertion that the beneficiary's work is likely to be influential does not establish that his work is already recognized as major contributions in the field.

Although Mr. [REDACTED] generally described the beneficiary's work as "unique" and "unusual," there is insufficient documentary evidence demonstrating that the beneficiary's work is of major significance. This regulatory criterion not only requires the beneficiary to make original contributions, the regulatory criterion also requires those contributions to be of major significance.

Although not specifically claimed for this criterion, the record of proceeding reflects that the petitioner submitted recommendation letters from the petitioner's employees who praised the beneficiary's work and indicated the impact of his work to the petitioner. Although the letters reflect the beneficiary's contributions to the petitioner, they fail establish that the beneficiary's contributions have been of major significance in the field as a whole. The letters only reflect the influence of the beneficiary's work on the business that employs him rather than evidence that beneficiary's contributions have been of major significance in the field. For example, on appeal, counsel submitted a letter from Nayan R. Shah who indicated that the beneficiary provided critical guidance on various topics as the Executive Director of Maryland [REDACTED]. However, there is no indication that the beneficiary's contributions to his employers have traversed the field as a whole. The petitioner's recommendation letters on behalf of the beneficiary will be considered again as they relate to the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Vague, solicited letters that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's 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, the letters considered above primarily contain general assertions of the beneficiary's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field: 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.).

USCIS may, in its discretion, use as advisory opinion 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 of support from the beneficiary's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

On appeal, counsel also claims that the beneficiary "has made original contributions to the field of clinical research by creating organ system protocols, electronic health records, paperless research, and patient recruitment and retention, remote patient monitoring, risk stratification by category . . . and complex care management." A review of the record reflects that in response to the director's request for evidence, the petitioner submitted samples of the beneficiary's work, such as a protocol design for a single site study and clinical processes, which he authored while working for the petitioner. However, the petitioner failed to demonstrate that his work is an original contribution of major significance in the field. Submitting samples of the beneficiary's work is insufficient to meet

the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) without documentary evidence demonstrating that his work has been of major significance in the field. In fact, counsel claimed that beneficiary's work "could assist in establishing more efficient systems of protocols in other clinical trials nationally [emphasis added]." 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. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. There is no evidence that the beneficiary's work has impacted the field in a significant manner, so as to reflect an original contribution of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Counsel additionally claims that the "beneficiary and his team of researchers obtained Food and Drug Administration ("FDA") approval of five drugs." At the initial filing of the petition, the petitioner submitted a copy of an email from the beneficiary to counsel entitled "Approved Drugs" that listed six drugs and a brief description of each drug. However, neither the petitioner nor counsel submitted any documentary evidence to support the assertions that the beneficiary obtained FDA approval. 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. at 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6. The petitioner failed to demonstrate the beneficiary's involvement in the FDA's approval of the drugs, let alone how it is considered of major significance in the field.

In addition, counsel claims that the beneficiary "has revolutionized the execution of clinical trials through his creation of multiple, individualized, algorithms tailored to the specifications he concluded to be most efficient when implemented for specific organ-system research trials." Again, counsel does not reference any documentation to support his assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *Id.* Furthermore, the recommendation letters from the petitioner's employees do not specifically mention the beneficiary's use of algorithms in clinical trials. While the letters discuss the beneficiary's roles in the petitioner's clinical trials, they do not support counsel's specific claim. Regardless, there is no evidence reflecting that the beneficiary's involvement in clinical trials has significantly impacted or influenced the field consistent with the plain language of the regulation.

Finally, although counsel stated that "[a]s further proof of [the beneficiary's] original contributions to the field of endeavor, we are submitting an article issued in [REDACTED], counsel failed to submit the purported article. Again, counsel claimed that the article "tends to demonstrate the importance and originality of [the beneficiary's] work, and how it will impact the framework of the healthcare provider system [emphasis added]," but the assertion that the beneficiary's work is likely to be influential is not sufficient to establish that his work is already recognized as a major contribution in the field. 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. at

49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added].” Without additional, specific evidence showing that the beneficiary’s work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has failed to demonstrate the beneficiary’s eligibility for this criterion.

Accordingly, the petitioner failed to establish that the beneficiary 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.*

The director determined that the petitioner failed to demonstrate the beneficiary’s eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.”

Similar to the published material criterion discussed above, in counsel’s table of contents to his brief, he indicates that “[the beneficiary] has authored scholarly articles in the interdisciplinary fields of Business and Science, in professional or major trade publications, or other major media,” and the table of contents indicates that the discussion is on page 16 of the brief. However, a review of counsel’s entire brief, as well as page 16, fails to reflect any discussion of the beneficiary’s eligibility for the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), nor is there any discussion regarding how the director erred for this criterion.<sup>3</sup> A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435. Therefore, these claims are abandoned. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*9 (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

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<sup>3</sup> Although counsel referred to an article that the beneficiary “contributed to,” in support of the original contributions criterion, the record does not contain the article or any further evidence that demonstrates the beneficiary’s authorship of this purported article.

The director determined that the petitioner failed to establish the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

On appeal, counsel claims that he was submitting the beneficiary's "Provider Handbook Training (ACO Overview) as further proof of his critical role for [REDACTED]. However, there is no evidence that the purported handbook was submitted. Notwithstanding, based on a review of the record, the petitioner submitted sufficient documentary evidence establishing that the beneficiary's role for the petitioner is leading or critical. However, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the beneficiary's role be "for organizations or establishments that have a distinguished reputation." The petitioner failed to demonstrate that it has a distinguished reputation.

On appeal, counsel claims:

[REDACTED] is one of only a handful of health care provider groups in the area approved for a federal program that will give them greater Medicare benefits for reducing costs and improving quality of care for Medicare patients. . . . [REDACTED] being selected as only one of four [REDACTED] in the area speaks to [the beneficiary's] accomplishments and his ability to make significant contributions in the U.S.

Counsel failed to submit any documentary evidence to support his assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6. Moreover, even if counsel's assertions were supported by documentary evidence and the petitioner has been approved by the U.S. Government for greater Medicare benefits, such evidence does not distinguish the petitioner from any of the other health care providers who have also been approved for greater Medicare benefits, so as to reflect the petitioner's distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the beneficiary to perform in a leading or critical role for more than one establishment or organization that has a distinguished reputation. The petitioner claimed the beneficiary's eligibility for this criterion based solely on his role with the petitioner.

Although the petitioner demonstrated that the beneficiary has performed in a leading or critical role for the petitioner, the petitioner failed to establish that it has a distinguished reputation and that the beneficiary performed such a role for any other organization or establishment.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The director determined that the petitioner failed to establish the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field."

Counsel did not contest the findings of the director for this criterion or offer additional arguments. Therefore, this criterion is abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*9 (plaintiff's claims abandoned when he failed to raise them on appeal to the AAO).

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

#### B. Summary

The petitioner has failed to satisfy the antecedent 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.

Even if the petitioner had 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.<sup>4</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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<sup>4</sup> 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 petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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.