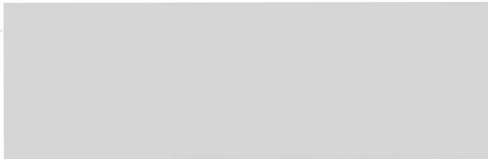




U.S. Citizenship
and Immigration
Services

(b)(6)



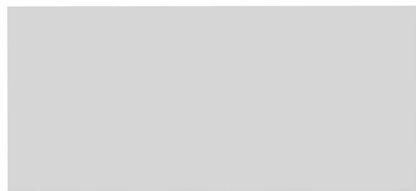
DATE: **JUN 01 2015**

FILE #:

IN RE: 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Immigrant Petition for Alien Worker (Form I-140), which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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), which makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief with additional documentation, as well as documentation that was previously submitted, and asserts that the beneficiary meets at least three of the regulatory criteria. For the reasons discussed below, we agree that the petitioner has not established the beneficiary’s eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that the beneficiary is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the individual’s sustained acclaim and the recognition of the individual’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

ANALYSIS

Evidentiary Criteria¹

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 petitioner asserted in its cover letter at the initial filing of the petition that the beneficiary was eligible for this criterion based on his authorship of two articles, as well as the citation of these articles by others in their own work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the beneficiary relating to his work in the field for which

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

classification is sought. Articles authored by the beneficiary are not articles about the beneficiary relating to his work.

The director issued a request for evidence (RFE) explaining why the petitioner's assertions did not meet this criterion and provided examples of evidence that the petitioner could submit to meet this criterion. Although in response to the director's RFE the petitioner addressed and submitted documentation for other criteria, the petitioner did not address the director's finding for this criterion and did not submit additional documentation relating to this criterion. The director determined in his denial of the petition that the beneficiary's authorship of articles and citation record did not meet the plain language of this regulatory criterion.

On appeal, the petitioner asserts the beneficiary's eligibility for this criterion based on his research grants and the single citation of his work in the document entitled "[REDACTED]" 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 other words, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the beneficiary relating to his work. Therefore, articles that cite the beneficiary's work do not meet the plain language of this criterion because they do not discuss the beneficiary and are not about the beneficiary relating to his work. Rather, they are about the authors' own work or provide a general review of new research in the field. Furthermore, the petitioner has not demonstrated how securing research grants equate to published material about the beneficiary relating to his work. The petitioner did not submit any published material that was about the beneficiary and his research grants in professional or major trade publications or other major media consistent with the plain language of this regulatory criterion. Thus, while citations to the beneficiary's work and the impact of his research grants are not relevant to this criterion, they will be considered below as they relate to the significance of the beneficiary's original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, the petitioner did not 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.

The director determined that the petitioner established the beneficiary's eligibility for 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." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing 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 did not 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 rise to the level of original contributions "of major significance in the field." The beneficiary's field, like most science, is research-driven, and scientists are unlikely to publish research that does not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), a beneficiary's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003). To be considered a contribution of major significance in the field of science, it can be expected that other experts would have reproduced or otherwise applied the beneficiary's results. Otherwise, the impact of the petitioner's work is difficult to gauge. Cf. *Visinscaia v. Beers*, 4 F.Supp.3d at 134-135 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

On appeal, the petitioner asserts the beneficiary's eligibility for this criterion based on the beneficiary's involvement with two U.S. patents – [REDACTED]

[REDACTED] In general, patents demonstrate the originality of the beneficiary's work; they do not, however, establish that the patents have been of major significance to the field. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 n. 7, (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the beneficiary made a contribution of major significance in the field through his development of this idea.

The petitioner further asserts that the first patent was based on the beneficiary's master's program at the [REDACTED] and was published in the form of two books by [REDACTED]. Having research work published in books does not alone establish that the beneficiary's work has been of major significance in the field. Rather, the petitioner must demonstrate that the beneficiary's work has had a significant impact or influence on the field, so as to reflect an original contribution of major significance in the field. In this case, the petitioner submitted the beneficiary's books, [REDACTED], but did not submit any evidence reflecting the impact of the books on the field, so as to demonstrate that the books have been of major significance. Moreover, although the petitioner submitted several recommendation letters that briefly mention that the beneficiary published two books, the letters provide no further evidence that the beneficiary's books have been of major significance in the field consistent with the plain language of this regulatory criterion.

Furthermore, the petitioner asserts that the second patent was the primary technology behind the petitioner's proprietary product, [REDACTED] which was launched in March 2014. The petitioner filed the

petition on April 23, 2014, approximately one month after the launching of [REDACTED]. The petitioner submitted a screenshot from [REDACTED] entitled, “[REDACTED]” dated March 13, 2014, reflecting that the petitioner “claims [the technology] will boost conversion efficiencies while lowering production costs via significantly reduced silver paste consumption.” Moreover, the petitioner is quoted in saying that “[o]ur [REDACTED] technology is expected to fundamentally change the way modules will be manufactured, shipped and installed in the future.” In addition, the petitioner submitted another screenshot from [REDACTED] entitled, “[REDACTED]” dated March 14, 2014, reflecting that “the company said it expected first customer purchase orders in the second-half of 2014” and “the first customer is expected to be from overseas but inferred there were three or four potential customers interested in the technology from all different continents.”

A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Given the descriptions in terms of future applicability and determinations that may occur at a later date, [REDACTED] while original, is still ongoing, and the actual impact of [REDACTED] on the field has yet to be determined. 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 eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. On appeal, the petitioner also submits a press release, dated August 11, 2014, reflecting that [REDACTED] successfully met requirements for industry certification standards. Notwithstanding that the standards were met after the filing of the petition, the press release offers no evidence explaining how meeting industry standards qualifies as an original contribution of major significance in the field. In fact, the press release indicates that [REDACTED] will be commercially released to customers in early 2015, and it is “*expected* to play a role in improving costs across the solar value chain (emphasis added).” The petitioner’s documentation provides no evidence of [REDACTED] past or current contributions to the field.

The petitioner also asserts the beneficiary’s eligibility for this criterion based on his authorship of five scholarly articles and approximately 40 citations of his work by others. Regarding the beneficiary’s authorship of scholarly articles, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). Thus, the regulations view contributions as a separate evidentiary requirement from scholarly articles. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in finding that the individual had not demonstrated contributions of major significance. 596 F.3d at 1122.

Regarding the beneficiary’s citations, the petitioner submitted documentary evidence reflecting that his article entitled “[REDACTED]

[REDACTED], was cited approximately 30 times, and the article entitled “[REDACTED]

[REDACTED] was cited approximately 10 times. The petitioner did not submit any

documentation regarding the citation record, if any, of the beneficiary's three other articles. Generally, citations demonstrate that the field has taken some interest to the beneficiary's work. However, they are not an automatic indicator that the beneficiary's work has been of major significance in the field. In this case, the number of the beneficiary's citations, considered both individually and collectively, is not reflective that the beneficiary's work has been "of major significance in the field." Again, the number of citations reflects that others have taken some interest in the beneficiary's work; however the petitioner has not submitted sufficient evidence to establish those citations rise to the level of original contributions of major significance in the field.

Finally, as mentioned above, the petitioner submitted several recommendation letters that praise the beneficiary and his work but do not demonstrate that his work has been of major significance in the field. For instance, [REDACTED] stated that the beneficiary had a "fundamental breakthrough in silicon solar cells" and indicated that the impact on silicon solar cell manufacturing was substantial. However, he provided only one example of a plant in Mississippi that was actually using this technology. A single example of use of the beneficiary's technology is not reflective of a contribution of major significance. Moreover, [REDACTED] stated that the beneficiary's work on silicon hetero-junction solar cells "significantly improves solar cell energy conversion efficiency and reduces manufacturing costs" but did not provide any specific examples showing how the beneficiary's work has already improved efficiency and reduced manufacturing costs; rather [REDACTED] stated only that the beneficiary's work "makes silicon cell manufacturing a possibility again in the USA." Similarly, [REDACTED] briefly discussed the beneficiary's work on multi-junction solar cells and indicated that it "shows immense promise as a major advancement in multi-junction solar cells research." A petitioner cannot succeed under this criterion based on the expectation of future significance. 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 (Reg'l Comm'r 1971).

The recommendation letters identify the beneficiary's original contributions in silicon hetero-junction solar cells and multi-junction solar cells but do not elaborate on the impact or influence that his work has had on the field as a whole. Rather, the letters indicate that the beneficiary's work was published in scientific journals or presented at scientific conferences. Again, having works published or presenting works at scientific conferences is not sufficient to meet the plain language of this regulatory criterion unless the petitioner submits documentary evidence reflecting the significant impact or influence the work has had on the field.

The letters repeat the regulatory language and indicate that the beneficiary's contributions are "significant" and "major" without explaining how the beneficiary's work rises to the level of original contributions of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the beneficiary's contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The letters considered above primarily contain bare 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*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Without supporting evidence, the petitioner has not met its burden of establishing that the beneficiary's present contributions of major significance in the field. Moreover, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Although the beneficiary's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for research to be accepted for publication, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field as a whole. While the record includes numerous attestations of the potential impact of the petitioner's work, none of the beneficiary's references provide examples of how the beneficiary's work is already influencing the field. While the evidence demonstrates that the beneficiary's work has potential, the submitted documentation does not establish that the beneficiary had already made contributions of major significance.

The opinions of the beneficiary's references 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 reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *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"). Thus, the content of the references' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, F. Supp.3d at 134-135 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Without additional, specific evidence showing that the beneficiary's work has been unusually influential, widely applied throughout the field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that the beneficiary meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not 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 established 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." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Accordingly, the petitioner established 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.

The director determined that the petitioner did not 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." In general, a leading role is evidenced from the role itself, and a critical role is one in which the individual contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

On appeal, the petitioner asserts the beneficiary's eligibility for this criterion based on his critical role with the petitioner and with [REDACTED]. The petitioner refers to letters from Dr. [REDACTED] Senior Vice President for the petitioner, submitted at the initial filing of the petition, in response to the director's RFE, and on appeal. Regarding the most recent letter submitted on appeal, Dr. [REDACTED] indicates that he worked with the beneficiary while he was employed by both organizations and therefore could evaluate the beneficiary's roles. Dr. [REDACTED] briefly discusses the beneficiary's accomplishments while employed by the petitioner such as the beneficiary's creation of a solar cell metallization model that was used as the basis for [REDACTED] as well as being the lead inventor of the patent that is the core of [REDACTED]. Dr. [REDACTED] further states that the beneficiary was the co-creator of another patent while employed at [REDACTED]. A review of Dr. [REDACTED] other letters reflect that same general assertions and indicate that the beneficiary was "one of eight person funding team that brought the concepts of [REDACTED] to fruition."

Dr. [REDACTED] letters do not provide sufficient information to demonstrate that the beneficiary performed in a critical role for [REDACTED] or the petitioner. Regarding [REDACTED], Dr. [REDACTED] briefly indicates that the beneficiary was the co-creator of a patent. Dr. [REDACTED] provides no additional documentation, for example, showing how the beneficiary's role compared to the other creators of the patent, so as to reflect that the beneficiary's role was critical. Besides working on the patent, the petitioner offered no other evidence indicating the beneficiary's responsibilities at [REDACTED] so as demonstrate that the beneficiary performed in a critical role. The lack of specific information provides no basis to gauge the role of the beneficiary while employed at [REDACTED].

Regarding the beneficiary's employment with the petitioner, Dr. [REDACTED] also makes general statements without providing specific information establishing that the beneficiary's role is critical. Although Dr. [REDACTED] indicated that the beneficiary was a member of an eight person funding team, Dr. [REDACTED] did not provide any details of the beneficiary's role within the funding team, so as to differentiate how his role compared with the other members of the team. Dr. [REDACTED] did not, for example, demonstrate that without the beneficiary's participation on the team the concepts of [REDACTED] would not have come to fruition, so as to demonstrate that the beneficiary's role was critical. Without documentary evidence that contains specific information regarding the beneficiary's role, the petitioner has not established that the beneficiary performed in a critical role consistent with the plain language of this regulatory criterion.

The petitioner also submits a letter from Dr. [REDACTED], who indicates that his letter "is an independent assessment of [the beneficiary's] leading and critical role at [the petitioner]" and asserts that "[i]t is abundantly clear that [the beneficiary] is a leading and critical member of the technical team at [the petitioner]." The opinion letter reflects that Dr. [REDACTED] was asked by the petitioner to provide his professional opinion. It does not appear that Dr. [REDACTED] was aware of the beneficiary or his roles prior to being contacted by the petitioner. Dr. [REDACTED] does not indicate what documentary evidence he reviewed to make his determination that the beneficiary performed in a leading and critical role. There is no indication that his opinion is based on firsthand knowledge of the beneficiary or his work. As discussed previously, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, the ultimate responsibility for making the final determination of an individual's eligibility for the benefit sought rests with USCIS. *Id.* The submission of letters of support from the beneficiary's personal contacts is not presumptive evidence of eligibility, and USCIS may evaluate the content of those letters to determine if they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence.

Although the letters asserted that the beneficiary's roles with [REDACTED] and the petitioner were critical, they do not reflect that the beneficiary performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Vague, solicited letters that simply repeat the regulatory language but do not explain how the beneficiary's roles were critical is not persuasive evidence. 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. at 1108, *aff'd*, 905 F. 2d at 41; *see also Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, at *5.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the organizations or establishments "have a distinguished reputation." On appeal, the petitioner indicates that the director never made a determination regarding its reputation. Further, the petitioner asserts that since it "has been working in the green technology sector for many years and is recognized worldwide as a leader in the field," the company has a distinguished reputation. The petitioner did not submit any documentation to support its assertions. 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)). The petitioner did not submit any documentation indicating that it is a recognized worldwide leader in the field. Therefore, the petitioner did not establish that it has a distinguished reputation. Moreover, the petitioner did not assert on appeal that [REDACTED] had a distinguished reputation, nor did the petitioner submit any documentation regarding [REDACTED] reputation.

The burden is on the petitioner to establish that it meets every element of this criterion. Without documentary evidence demonstrating that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not established that the beneficiary meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that the beneficiary meets this criterion.

Summary

For the reasons discussed above, we agree with the Director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.²

² We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

(b)(6)



NON-PRECEDENT DECISION

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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.