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

(b)(6)

DATE: MAR 0 2 2015 Office: TEXAS SERVICE CENTER 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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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 as a researcher, 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 aliens 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. For the reasons discussed below, we agree that the petitioner has not established his 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 he is one of the small percentage who are at the very top in the field of endeavor, nor has he demonstrated 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.

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) sets forth a multi-part analysis. First, a petitioner can demonstrate the alien's sustained acclaim and the recognition of the alien'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").

II. ANALYSIS

A. Evidentiary Criteria[1]

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 the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, including his position as reviewer for scholarly journals, to establish that he meets this criterion.

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

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. Contributions of major significance connotes that the petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-36. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided several letters from experts in the field. The director determined that the petitioner did not meet the requirements of this criterion. On appeal, the petitioner asserts that the director did not fully consider all of the information in the letters, quoting only a single paragraph "out of the context" from a limited number of the eleven expert letters. Within the appellate brief, the petitioner identifies eight letters that he claims are from independent sources that provide specific examples of the petitioner's qualifying contributions. The petitioner also reiterates his response to the RFE in which he identifies evidence other than the letters relevant to this criterion which the director did not address. We will discuss all of this evidence below.

The January 15, 2014 letter from Professor and Chair of the Department of Behavioral and Community Health at the reflects that he is aware of the petitioner through his published articles. Dr. indicates that the petitioner's study findings have major significance and discusses the petitioner's results at length; however, he did not substantiate his assertion regarding the significance of these findings by stating the impact that these findings have already had within the petitioner's field. Under this criterion, it is not sufficient that the petitioner's results are original or that they have important implications. Instead, the petitioner must provide an explanation as well as probative evidence that his findings have had a significant impact within his field. Dr. claims that the petitioner's three studies reveal the petitioner's original contributions because the studies focus on African-Americans who are at greater risk for obesity in the United States. Dr. also claims that the petitioner found an important implication to weight management for America's youth because perceived self-weight is a stronger indicator than actual weight for predicting implications on public health. Although Dr. implies that the petitioner's work in the field is important, he has not demonstrated how the petitioner's findings have already made a significant impact within the field. It is not sufficient to develop important conclusions without being able to show how such original findings have considerably moved the field forward.

Dr. also discusses the petitioner's reviewing duties, which we have already considered above, as well as two other areas in which the petitioner performed research, childhood obesity and adolescent

risk behavior. Within the first area, Dr. claims the petitioner "played a crucial role in piloting and evaluating a very novel family-centered obesity prevention" program. Dr. concludes that the petitioner's "findings systematically explained maternal empowered-parents' equal role as researchers and communities in designing and implementing effective obesity prevention programs particularly for children in low-income families. His efforts and merits provided a promising approach that warrants future attention in intervention design and [ ] initiatives overall." That the petitioner performed in a crucial role or that his efforts provide a promising approach are not sufficient to meet this criterion's requirements. The petitioner must provide evidence that shows the impact of his work within the field that has already been realized. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). This evidence does not establish that, as of the priority date, the petitioner had contributed to his field in a significant manner as required by the regulation. Regarding the petitioner's studies on adolescent risk behavior, specifically teenage drinking and driving, Dr. discusses the importance of the issue and the petitioner's research findings without describing how these findings have affected the petitioner's field.

In his January 7, 2014 letter, Professor of the Sociology Department at the , also discusses (1) the petitioner's accomplishments with (2) findings from the petitioner's three research papers, and presentation relating to teenage drinking, (3) the petitioner's high standing in the field, and (4) his contributions to the field. Dr. does not, however, discuss the influence such findings have had within the petitioner's field. 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. Att'y Gen,* 745 F. Supp. 9, 17 (D.D.C. 1990). Dr. did characterize the petitioner as a pioneer in social-ecological behavioral approaches, but the petitioner's primary impact within the field that she identifies is that the petitioner published three works. At issue, however, is the impact of this work upon dissemination to the field.

While Dr. does state that she has cited to the petitioner's work within her own research, she has not provided additional specific information to corroborate the assertion that the petitioner has made a significant impact in the field or even her own work. A review of the two articles by Dr. that the petitioner submitted reveals that Dr. relied on the petitioner's work as part of the background literature she reviewed, but does not demonstrate that his results or methods were fundamental to her research. In one article which examined sex-specific disparities in total and abdominal obesity prevalence across six ethnic-immigrant groups, Dr. cited the petitioner's work as one of four articles for the proposition that body weight is determined by the net difference between energy coming in and energy going out in addition to other factors. In a second article addressing differences among ethnic groups, Dr. cited the petitioner's work as one of two articles for the proposition that neighborhood safety and accessibility to exercise facilities have been linked to higher levels of

In addition, Dr. does not describe the extent to which other researchers have widely relied upon the petitioner's findings as a foundation or basis within their own published works. Finally, Dr. states: "I can foresee with confidence that [the petitioner's] original contribution of major significance will provide policymakers, health researchers, and behavioral practitioners with solid evidence and guidelines in designing and implementing tailored prevention and intervention to decline teenage impaired driving and [the petitioner] will become a leading scholar in the field of teenage impaired driving research in the coming years." The petitioner must establish the elements for the approval of the petition at the time of filing rather than relying on future prospective benefits. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak,* 14 I&N Dec. at 49.

In a December 16, 2013 letter, Professor and Regional Dean at the identifies the petitioner's contributions in the areas of teenage impaired driving, obesity, and physical activity. Relating to the petitioner's work in the area of teenage impaired driving, Dr. indicates that the petitioner's contribution of major significance in his field is that he has "identified, for the first time, parental, particularly fathers', monitoring knowledge as a protective factor against DWI. His original contribution of major significance provides health educators and practitioners much needed tools to design more effective and specific interventions to reduce adolescents' impaired driving." Dr. also indicates that the petitioner's work "satisfies an urgent need to ensure adolescent safety, and his research provides clear and precise direction on achieving this goal." Dr. describes the petitioner's findings and their potential implications, but she has not explained how any institution has developed any new implementation plan based on the petitioner's work. For example, Dr. has not indicated that the petitioner's findings have resulted in the reduction of teenage impaired driving occurrences or even led to programs attempting to reduce such occurrences. The petitioner's proposal of a new method that has yet to produce results is not a contribution of major significance in the field, and is not sufficient to meet this criterion's requirements.

Dr. also discusses the petitioner's work relating to obesity and physical activity indicating that his contribution in the field is his development of a social-ecological model that served as the basis of and led to original research findings regarding these issues. Inasmuch as Dr. asserts that the petitioner's contributions in the field are his research findings, she does not explain how his findings have already influenced the field with any measurable outcome. Finally, Dr. summarizes the petitioner's contributions in the field as his discovery of a guideline that "contributed to the field with a clear, concise, public health message that would encourage increased participation in physical activity by a largely sedentary US population and can be applied as a straightforward guideline to weight control practices among US women." Dr. utilizes prospective language within the above quote indicating that the petitioner's findings have not yet become a standard guideline within the field or has been implemented as guideline anywhere. Such future contributions are not qualifying under this criterion, as the petitioner must establish his eligibility at the time of filing rather than relying on future prospective benefits. 8 C.F.R. § 103.2(b)(1), (12).

Dr. further states that the petitioner's "social-ecological model provides health researchers with a systematical framework to truly understand African Americans' and design and implementing

[sic] intervention programs taking into account of [sic] all relevant factors that interplay in a realistic context." While she indicates why the petitioner's model is relevant and useful, Dr. has not explained how the petitioner's model has already had repercussions within the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). It can be expected that, to rise to the level of contributions of major significance, other experts would have already reproduced and confirmed the petitioner's results and applied those results in their work in a significant manner throughout the field. Otherwise, it is difficult to gauge the impact of the petitioner's work.

In his March 18, 2014 letter, , indicates that the petitioner's research has major public health significance because it reveals for the first time important population-based evidence with the following implications:

1. Raising high national alert about teenage impaired driving;
2. Helping researchers, injury prevention professionals, and policymakers understand the mechanism of teenage impaired driving; and
3. Facilitating the development of effective solutions to reduce impaired driving.

Dr. also indicates that these implications "are critical because about 1/3 of fatal motor vehicle crashes are due to teenage drinking and driving, and motor vehicle injuries involving teenagers result in costs of over $30 billion yearly." Dr. continues stating: "[The petitioner's] original research provides crucial new data and analyses about predictors of DWI [driving while intoxicated] and RWI [riding with impaired drivers] that can be addressed in prevention programs to save lives and substantial health care cost." Dr. describes what the petitioner's research has revealed rather than how it has impacted the field. For example, Dr. states that the petitioner's research provides new information relating to predictors that "can be addressed in prevention programs" in a future context, but he did not provide examples that demonstrate that a significant number of prevention programs have incorporated the petitioner's findings, which might substantiate Dr. claim. Dr. does not identify how the petitioner has already made a significant impact in his field, which is required by this regulatory criterion. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak,* 14 I&N Dec. at 49.

Dr. further discusses the petitioner's research findings related to adolescent obesity stating: "[The petitioner's] original findings based on a national sample and objective methodology have major significance because they have provided reliable new evidence that overweight adolescents participate in less physical activity, spend more time in sedentary activities, and are at significantly greater cardio-metabolic risk than normal weight adolescents. Based on [the petitioner's] research findings, it can be inferred that the benefits of greater physical activity and less time in sedentary

pursuits depend in part on weight status." Dr. [redacted] indicates that the petitioner's findings have been accepted for presentation at an international conference. That the petitioner's findings are new and being presented at a conference are notable, but not sufficient to demonstrate that they have been impactful within the field to any extent. This evidence does not establish that, as of the priority date, the petitioner had contributed to his field in a significant manner as required by the regulation.

Regarding the remaining letters on record, each appears to express that the petitioner's research findings themselves are his contributions of major significance. However, the letters' authors do not explain how the petitioner's original findings have already impacted the field. Although his work may add to the incremental progress to the general pool of knowledge within the respective research areas, the letters do not describe how the petitioner has made an impact in the field at large. 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 director may not have expressly addressed every piece of evidence, the record supports a conclusion that the director adequately considered the entire record. *See Martinez v. INS,* 970 F.2d 973, 976 (1st Cir.1992); aff'd *Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

The Board of Immigration Appeals (BIA) has stated 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 *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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. at 1136.

Vague, solicited letters from local colleagues 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 the conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. 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 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" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). *See also Visinscaia*, 4 F.Supp.3d at 134-35 (concluding that

USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere.

The petitioner also claims the following contributions in the field: (1) he is a journal review board member; (2) he is the author of articles in professional or major trade publications and conferences; and (3) his published works are widely cited. The petitioner submitted evidence that he is either a review board member or a reviewer for scholarly journals, and that he is a reviewer of abstracts on behalf of conferences in the field. The petitioner has not submitted evidence that he was retained to perform peer review because he had made contributions of major significance in his field. Nor has the petitioner explained how his reviewing the work of peers constitutes a contribution of major significance in his field, other than to assert that highly regarded journals would not select him to review articles were it not for his "high level expertise and sustained international acclaim." This assertion is not persuasive evidence that the petitioner has made a significant impact in his field. We have already considered this evidence under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Meeting that criterion does not create a presumption that the petitioner also meets the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). It is the petitioner's burden to demonstrate how that evidence is also relevant to this criterion. The petitioner has not established that every researcher that an editor selects to review manuscripts submitted for publication, must have made or is, by completing the reviews, making significant contributions to their field as anticipated by the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The petitioner also claims that his citation record supports his eligibility under this criterion. In response to the director's RFE, the petitioner provided an email in which the text reflects that the petitioner's article titled, "
Among U.S. Adolescents" ranked tenth in the *gs* top eleven downloaded articles in 2013. That an article is downloaded is not tantamount to being among the journal's most cited articles. The petitioner did not provide evidence that the journal measures downloads from unique users. Therefore, the number of times the article was downloaded is not an accurate reflection of the field's reliance on this article. The petitioner also has not provided documentation reflecting the number of citations this article has received within the field.[2]

Further, the petitioner asserts his overall citation record demonstrates his contribution to the field. The petitioner provided both a foreign language citation record, as well as a citation record for his work that originates in English. Regarding the foreign language citations, the evidence establishes moderate citation for each article individually and that the petitioner's book, , has garnered numerous citations. The record, however, contains no information about the petitioner's role as a coauthor of this book or information about the subject matter of the book.

[2] Google Scholar, while not exhaustive, reflects the article titled, " has received one cite. *See* =, accessed on January 13, 2015 and incorporated into the record of proceeding.

Specifically, none of the petitioner's references address this work. Accordingly, the record does not establish whether the book is a compilation of existing evaluation methods or an original contribution to evaluating physical function. Therefore, while the citation level is notable, the petitioner has not established that the book is an original contribution of major significance.

The petitioner also submitted each English language article he authored and articles that cite to his work. While the number of total citations in the aggregate is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. It is also relevant how many citations individual articles have garnered. The record does not demonstrate that any one of the petitioner's articles has garnered more than moderate citation. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work. Moreover, the content of the citations is not indicative of a significant impact. For example, the citing article titled, ' ' from the September 2011 edition of reflects that this article's authors used a modified version of the Activity Support Scale from one of the petitioner's published works. This citation does not demonstrate the petitioner's work was influential to the citing work as the authors did not utilize the petitioner's own scale. Additionally, the citing article titled, "Associations among social capital, parenting for active lifestyles, and youth physical activity in rural families living in upstate New York" in the October 2012 edition of indicates the petitioner's findings are supported by prior research. Confirming prior results, while important to the integrity of the field, is not indicative of original research that, on its own, constitutes a contribution of major significance.

In this case, the petitioner's English language citation history is not reflective of the petitioner's significant impact in the field. Merely submitting documentation reflecting that the petitioner's work has been, at the individual article level, moderately cited by others in their published material is insufficient to establish eligibility for this criterion. The petitioner has not submitted persuasive evidence that number of the citations of the petitioner's articles are reflective of the significance of his work in the field or that the level of reliance by the citing authors is notable. Accordingly, the petitioner has not established how the citations of his work by others demonstrate that his published work significantly contributed to his field as a whole.

Based on the foregoing analysis, the petitioner has not submitted evidence that meets this criterion's requirements.

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 the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, to include multiple published works in the requisite publication types, to establish that he meets this criterion.

B. Summary

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

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 his or her field of endeavor.

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

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