(b)(6)

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

**U.S. Citizenship and Immigration Services**

DATE: MAY 26 2015

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:

NO REPRESENTATIVE OF RECORD

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, 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 "China legal research field," 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 petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. 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 asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (v) and (vi). For the reasons discussed below, we agree with the director 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 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.

## 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 his sustained acclaim and the recognition of his 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 he 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]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

[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.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the petitioner asserts that he meets this criterion because he received the Graduate Scholarship, which according to the petitioner is "a very competitive, highly selective renowned award for excellence in the field, especially on relevant social science studies." The petitioner states that "faculties in top universities" could apply for the scholarship and that the selection criteria included an applicant's "potentials" and "proved academic contributions." The petitioner further states that in 2002, he was one of a few candidates worldwide who received the scholarship. The petitioner has not submitted evidence in support of the above assertions. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The evidence in the record establishes the petitioner's receipt of the scholarship, but does not establish that the scholarship was offered to him in recognition for his excellence in the field, or that the scholarship constitutes a nationally or internationally recognized prize or award. According to a March 2012 letter, the Graduate Scholarship Committee of the offered the petitioner a grant to support him as a doctoral scholar. According to an online printout of the institute is "dedicated to advancing higher education In response to the director's request for evidence (RFE), the petitioner submitted additional online printouts about the institute, noting that the institute's "core activity has been to offer fellowship for . . . To date over 1000 faculty from Asia have received fellowships and over 300 doctoral students have received their degrees with support." The record does not include evidence relating to the selection criteria for the scholarship or that the selection criteria included a showing of the recipient's excellence in the field. Even if we accept the petitioner's personal statements regarding the requirements, potential and academic achievements are not excellence in the field. The record also does not included evidence showing that the reputation or prestige of this scholarship is recognized on a national or international level. Indeed, there is no evidence in the record showing that anyone not associated with the institute is familiar with the scholarship.

Furthermore, as noted on the online printout, the scholarship is offered to "younger doctoral and post-doctoral scholars," which indicates that experienced and well-established scholars in the field are ineligible for the scholarship. Although the petitioner asserts on appeal that the "award does not exclude established professionals who have already achieved excellence in the field," the petitioner has not submitted any evidence in support of his assertion. As noted, going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Ultimately, the petitioner has not shown that being a recipient of a scholarship that is open only to an applicant pool limited to "younger

doctoral and post-doctoral scholars" constitutes evidence of his receipt of a nationally or internationally recognized prize or award for excellence in the field as a whole.

Finally, the petitioner asserted that his receipt of a grant from the constituted his receipt of the Scholarship Award. The director disagreed. The director found that the evidence in the record did not demonstrate that the award is a nationally or internationally recognized prize or award for excellence in the field. On appeal, the petitioner has not specifically challenged this aspect of the director's finding. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States 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) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

In the alternative, although the petitioner has submitted an online printout relating to stating that it offers financial assistance to , the petitioner has not submitted any evidence from demonstrating he actually received financial assistance from Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, the petitioner has not shown that financial assistance constitutes an award or prize for excellence in the field. The online printout makes no mention of the financial assistance as an award or prize for excellence in the field. Furthermore, although the online printout provides information relating to the nature and purpose of the financial assistance, it does not establish that the grant of financial assistance is in recognition of a recipient's excellence in the field, or that the recognition is national or internationally recognized.

Accordingly, the petitioner has not submitted documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

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

The petitioner has never asserted that he meets this criterion. Nevertheless, initially, the petitioner submitted a list of his publications that included his role as chief editor of the book published by the Publishing Company. On appeal, the petitioner reiterates that he has served as the chief editor for a book on The record, however, does not include any evidence in support of this assertion.[2] Going on

[2] The exhibit list for the initial submission does not list a copy of pages from this book and while the submission included some foreign language materials, the petitioner did not submit a translation of those materials. The regulation at 8 C.F.R § 103.2(b)(3) requires that the petitioner submit a complete certified translation for every foreign language

record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner has not submitted evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

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

On appeal, the petitioner asserts that he meets this criterion because according to his articles have garnered a number of search queries and downloads, and because other scholars have cited his work. In addition, he asserts that because his articles were published in "leading journals in the [United States], China and internationally," the articles constitute his original contributions of major significance in the field." The petitioner also indicates that he has finished the manuscripts for two books and two articles that are not yet published. The petitioner also states that he has been invited to present topics related to Chinese law in international conferences.

To meet this criterion, the petitioner must demonstrate that his contributions are both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). In other words, the petitioner must show that his contributions are original, such that he is the first person or one of the first people to have done the research or work in the field, and that his contributions are of major significance in the field, such that his research or work fundamentally changed or significantly advance the field as a whole. In addition, contributions of major significance connotes that his work has already significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134-36.

In this case, the record does not support a finding that the petitioner has made original contributions of major significance in the field. First, authorship of scholarly articles and academic books alone, without a showing of his work's impact in the field, does not establish that the petitioner has met this criterion. The regulations contain a separate criterion regarding the authorship of published articles, 8 C.F.R. § 204.5(h)(3)(vi), which we discuss below. Accordingly, the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publication and presentations, which are evidence of the dissemination of the petitioner's work, are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they are of "major significance" in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). In *Kazarian*, the court reaffirmed its holding that our adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a published study is a contribution of major significance, we look at the impact an article has after publication.

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document. Without a translation, these foreign language documents have no probative value.

The record lacks sufficient evidence showing that the impact of the petitioner's work is at a level consistent with contributions of major significance in the field. The petitioner has submitted evidence showing that his articles were published in the The petitioner has also submitted evidence showing that his article has been cited in a 2013 article, which cites the petitioner's article in two footnotes among its approximately 150 footnotes. The petitioner has not shown that an article that has garnered one citation since its publication constitutes a contribution of major significance in the field.

On appeal, the petitioner asserts that two professors have cited his article in their articles. The petitioner, however, has not submitted the two professors' articles in support of his assertion. Moreover, assuming the two professors did cite the petitioner's article, the petitioner has not shown that this minimum level of citation is indicative of contribution of major significance in the field. Although the record includes an online printout from noting that the petitioner's work has garnered 133 search queries and 245 downloads, the petitioner has not submitted evidence relating to that shows that the information is either reliable or accurate. Regardless, the number of downloads is not probative of the qualifications of those who have searched for and/or downloaded his work; specifically, if they are people in the same field, allied or different fields than the petitioner's field, or if they are laypeople. In addition, the petitioner has not shown that each download represents a unique user. Finally, a decision to download the article does not establish that the individual ultimately found the petitioner's work useful and relied upon it as might be indicated by a citation. In summary, neither the citation level nor the printout from establishes that the impact of the petitioner's work is indicative of a contribution of major significance in the field.

Second, the petitioner has submitted a number of foreign language documents that he asserts to be his articles published in China. The petitioner has not submitted complete English translations for the relevant portions of these foreign language documents. *See* 8 C.F.R. § 103.2(b)(3).[3] As such, these foreign language documents do not have any evidentiary weight. In addition, although the petitioner asserts that the published his articles, he has submitted insufficient evidence, in English or with certified translations, that identifies these two publications as the publications that published his articles. The document entitled "[the Petitioner's] Selected List of Publications" does not constitute evidence. Rather, it constitutes the petitioner's assertion, which the evidence in the record has not substantiated. Moreover, assuming *arguendo* that these two publications did publish his articles, as

[3] The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." In this case, the record lacks complete translations of the foreign language documents and a translation certificate that affirms that the translations are "complete and accurate."

discussed above, evidence of publication alone is not sufficient to show that the petitioner meets this criterion absent evidence that his articles became contributions of major significance in the field after publication. The petitioner has submitted evidence on these publications' This evidence relates to the impact of a publication as a whole, not the impact of each article that appeared in the publication. As such, even if the establishes the impact of the publication in the field, it does not establish the impact of the petitioner's articles in the field. In addition, the petitioner has submitted a number of foreign language documents, without English translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3), that he asserts on appeal establish one of his articles "has been cited widely and frequently by other articles or books among Chinese academic . . . ." As these foreign language documents have not been translated according to the regulatory requirements, they do not have any evidentiary weight, and they do not demonstrate the impact of the petitioner's article.

Similarly, the evidence shows that the published the petitioner's Doctor of Juridical Science (S.J.D.) thesis, entitled ' The petitioner has not, however, submitted evidence showing the impact of this work after publication. The petitioner has not shown that anyone else in the field has either cited to or relied on his S.J.D. thesis in their own work.

Third, the petitioner's participation in a 2004 symposium does not establish that he meets this criterion. The petitioner has submitted an online printout listing him as one of the participants at the Symposium held in China. He has also submitted a document from the symposium, indicating that he submitted an abstract entitled ' in China." Participation in symposia and conferences, similar to the publication of articles, constitutes evidence of the dissemination of the petitioner's work. To meet this criterion, the petitioner must show that after dissemination, the impact of his work is at a level consistent with contributions of major significance in the field. The petitioner has not submitted evidence showing what impact, if any, his participation at the symposium has had in the field. Similarly, the petitioner has also submitted evidence showing that in 2012, the accepted his paper proposal. The record, however, does not include evidence showing the impact of the petitioner's paper after the conference.

Finally, the petitioner's assertion that he has finished a number of manuscripts that are not yet published does not establish that he meets this criterion. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of future impact of his work at a level consistent with contributions of major significance. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot

"consider facts that come into being only subsequent to the filing of a petition.") Without evidence of actual publication, the petitioner has not shown that his work has been disseminated in the field. More significantly, the petitioner has not shown that his unpublished work has had an impact in the field that is consistent with contributions of major significance, as required under the plain language of the criterion.

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

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

The director concluded in his decision that the petitioner met this criterion. The evidence in the record supports this conclusion. Specifically, the petitioner has submitted evidence showing that he authored scholarly articles, including: (1) a 2011 article entitled published in the and (2) a 2012 article entitled published in the Accordingly, the petitioner has submitted evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

B. Summary

The evidence shows that the petitioner has received his Master of Laws (LL.M.) degree and Doctor of the Science of Law (J.S.D.) degree at University, and his Doctor of Philosophy (Ph.D.) degree at The petitioner has also submitted evidence showing that he had been an association professor of law in China and have published a number of scholarly materials. Notwithstanding the above accomplishments, for the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial 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 petitioner has achieved sustained national or international acclaim and is one of the small percentage who have 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 on which the petitioner relies on appeal in the aggregate supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.[4]

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.

[4] 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).