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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: NOV 2 9 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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 immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a lawyer.[1] The director and the AAO determined that the petitioner had not met the requisite requirements for classification as an alien of extraordinary ability.

In the AAO's June 21, 2013 decision dismissing the petitioner's appeal, the AAO determined that the petitioner had failed to demonstrate that his proposed employment as a lawyer engaged in the practice of law falls within the purview of "the sciences, arts, education, business, or athletics" as required by section 203(b)(1)(A) of the Act. In addition, the AAO found petitioner had not established his receipt a major, internationally recognized award, or that he meets at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). The AAO determined that the petitioner's evidence had met the category of evidence at 8 C.F.R. § 204.5(h)(3)(iv). The AAO specifically and thoroughly discussed the petitioner's remaining evidence and determined that he failed to establish eligibility for the nationally or internationally recognized prizes or awards for excellence criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the original contributions of major significance criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), and the leading or critical role for organizations or establishments that have a distinguished reputation criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Thus, the AAO concluded that the petitioner had failed to satisfy the antecedent regulatory requirement of three categories of evidence.

On motion, the petitioner asserts that his occupation "falls in the purview of 'in the sciences, arts, education, business, or athletics'"; that he has demonstrated an achievement equivalent to a major, internationally recognized award; that he submitted comparable evidence for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii); and that he meets the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(vi) and (viii).

I. Extraordinary ability "in the sciences, arts, education, business, or athletics"

With regard to the issue of whether the petitioner's profession and the employment that he intends to pursue fall within the sciences, arts, education, business, or athletics, the appellate decision stated:

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[1] According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on October 25, 2006 as an F-1 nonimmigrant student.

The statute requires that the alien demonstrate extraordinary ability "in the sciences, arts, education, business, or athletics" and that the alien "seeks to enter the United States to continue work in the area of extraordinary ability." *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii). On the Form I-140 petition, in Part 5, the petitioner listed his occupation as "Lawyer." In addition, under Part 6, "Basic information about the proposed employment," the petitioner listed his job title as "Lawyer" and the nontechnical description of his job as "Practice of Law."

As evidence that he intends to continue work in this area of expertise, the petitioner submitted the following:

1. An April 9, 2009 certificate stating that the petitioner "was admitted to practice as an Attorney and Counselor of Law, to the United States Court of Appeals for the Federal Circuit" on October 20, 2008;
2. Evidence of the petitioner's degree;
3. A certificate from the United States District Court, Northern District of Texas stating that the petitioner "was duly admitted and qualified to practice as an Attorney in the District Court on . . . October 14, 2009";
4. A certificate from the United States District Court, Nebraska stating that the petitioner "was duly admitted and qualified to practice as an Attorney in the District Court" on August 28, 2009;
5. A statement from the petitioner indicating: "The [petitioner] has formed/incorporated his own legal practice, a professional corporation – 'The Law Office of Dr. and has established presences in both the State of New York and the State of California";
6. A certificate from the State of New York Department of State, Albany certifying that "The Law Offices of Dr. Professional Corporation was filed for in this Department" on July 24, 2009;
7. A certification from the First Deputy Secretary of State, State of New York Department of State certifying that the Law Offices of Dr. Professional Corporation was filed for on July 24, 2009;
8. A "Certificate of Status" from the State of California Secretary of State reflecting a registration date of August 27, 2009 for the Law Offices of Dr. Professional Corporation;
9. A letter from the Office of the Clerk, Supreme Court of the United States stating that the petitioner was admitted to the Bar of the Court effective June 4, 2012; and
10. A June 4, 2012 certificate stating that the petitioner was "duly admitted and qualified as an Attorney and Counselor of the Supreme Court of the United States."

Thus, the record is clear that the petitioner intends to continue to work as a lawyer practicing law in the United States. The petitioner has not established that a lawyer engaged in the practice of law falls within the purview of "the sciences, arts, education, business, or athletics."

> The phrase "in the sciences, arts, education, business, or athletics" is not superfluous and, must be understood to have a specific 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). A qualified alien who is a member of the professions and who holds an advanced degree qualifies for an EB-2 immigrant visa. Section 203(b)(2)(A) of the Act, 8 U.S.C. § 1153(b)(2)(A). The practice of law is a profession for purposes of eligibility for the EB-2 immigrant visa. *Id.* Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The practice of a profession is not one of the fields within the EB-1 category. *Id.* Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). Congress specifically included members of the professions in sections 203(b)(2)(A) and 203(b)(3)(A)(ii), and excluded them from section 203(b)(1)(A). If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics." As Congress *did* use that phrase, it can be presumed that there may be aliens of extraordinary ability, who enjoy sustained national or international acclaim, that are nevertheless ineligible for classification under section 203(b)(1)(A) *solely* because their occupation does not fall within the sciences, arts, education, business, or athletics. To hold otherwise would render the clear language of the statute meaningless and undermine Congressional intent. The petitioner has not established that his profession and the employment he intends to pursue, fall within the sciences, arts, education, business, or athletics.

In response to the above findings, the petitioner asserts that "[t]here is no reasonable link, either logical or legal link, between the fact that Congress made some aliens qualified for EB-2 immigrant visa and the false assumption that Congress intended to exclude these aliens from EB-1 immigrant visa." Congress, however, included the phrase "in the sciences, arts, education, business, or athletics" in section 203(b)(1)(A) of the Act. Accordingly, occupations that do not fall within the sciences, arts, education, business, or athletics are ineligible for classification pursuant to section 203(b)(1)(A) of the Act.

The petitioner further states: "[T]he AAO's evaluation rested on an improper understanding of the occupation of 'lawyers.' The AAO . . . was not aware of the various duties of 'lawyers.' The occupation of 'lawyers' falls in the purview of 'business.'" The petitioner submits information about lawyers from the U.S. Department of Labor's *Occupational Outlook Handbook* (*OOH*):

> Lawyers typically do the following:
>
> - Advise and represent clients in courts, before government agencies, or in private legal matters
> - Communicate with their clients and others
> - Conduct research and analysis of legal problems
> - Interpret laws, rulings, and regulations for individuals and businesses
> - Present facts in writing or verbally to their clients or others and argue on their behalf

- Prepare and file legal documents, such as lawsuits, appeals, wills, contracts, and deeds

The petitioner has not established which of the preceding legal duties constitute his area of legal expertise or that his specific duties fall under the purview of "business." Furthermore, regarding the documentation submitted by the petitioner relating to his intent to continue work in his area of expertise the United States (items 1 – 10 listed in the appellate decision), there is no evidence showing that the petitioner intends to advise U.S. companies on business-related matters, or that his area of expertise includes corporate business activities. While employment in occupations such as a "corporate counsel" or an "in-house counsel" for a company doing business in the U.S. can meet the elements of section 203(b)(1)(A) of the Act, the petitioner has not established that his intended work and area of legal expertise are in "business."

In addition, the petitioner submits a table from the *OOH* that "shows a list of occupations with job duties that are similar to those of lawyers." The occupational table of similar occupations lists judges, mediators, hearing officers, paralegals, legal assistants, and postsecondary teachers. The job duty description for "postsecondary teachers" states: "Postsecondary teachers instruct students in a wide variety of academic and vocational subjects beyond the high school level." The petitioner contends that the *OOH* "indicates that the occupation of 'Postsecondary Teachers' is with job duties that are similar to those of lawyers," and, therefore, "the occupation of 'lawyers' also falls within the purview of education." There is no evidence showing that the petitioner seeks employment to instruct students in the practice of law at a U.S. college, university, or law school, or that his area of expertise involves educating students in matters of law at a postsecondary institution. While working in occupations such as a law professor or a law school faculty member in the United States can meet the elements of section 203(b)(1)(A) of the Act, the petitioner has not established that his intended work and area of expertise are in "education."

The petitioner further states: "Moreover, the official title of the doctorate the petitioner holds is 'Doctor of Juridical Science,' a doctoral degree be awarded [sic] solely by a number of U.S. law schools. It is apparent that the occupation of 'lawyers' falls in the purview of 'sciences' too." While the petitioner's Doctor of Juridical Science from of Law indicates that he received a degree for advanced international legal studies, earning the degree does not establish that "the sciences" constitute the petitioner's area extraordinary ability or that he seeks to continue to work in the study of law as a scientific discipline such as a researcher or a professor. Evidence that the petitioner seeks to continue to work in his area of expertise in the United States includes letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. 8 C.F.R. § 204.5(h)(5). None of the documents submitted by the petitioner (items 1 – 10 listed in the appellate decision) demonstrates that the area of expertise in which he seeks to continue working in the United States falls under "the sciences."

The petitioner has not demonstrated that his specific occupation is in the sciences, arts, education, business, or athletics, or that he will continue to work in any of these areas as a lawyer in the United States.

II. One-time achievement (that is, a major, internationally recognized award)

With regard to the issue of whether the petitioner has demonstrated a qualifying one-time achievement, the appellate decision stated:

> The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award.

The petitioner submitted an April 7, 2010 e-mail message from Registration Office, stating:

> I have pleasure in informing you that you are allowed to follow the Directed Studies for the preparation of the Academy Diploma.
>
> In principle, I also accept temporary, your application for the Diploma itself.
>
> However, I will ask the director of studies to give me his/her opinion regard your participation to the Directed studies.
>
> Consequently, the final decision will be taken during your stay at the
>
> I would like to highlight the difficulty of this examination leading to a high level diploma issued sparingly.

The petitioner also submitted his identification card for the reflecting a period of attendance from July 4 – July 24, 2011. In addition, the petitioner submitted a July 2011 document from the Hague Academy of International Law entitled "CANDIDATES DIPLOMA EXAMINATION PUBLIC INTERNATIONAL LAW" listing the petitioner as an examination candidate. While the petitioner appears to have been accepted to the in April 2010, the preceding documentation indicates that he attended the academy subsequent to the petition's May 14, 2010 filing date. Eligibility, however, 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 further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the AAO will not consider diplomas or

honors received by the petitioner after May 14, 2010 as evidence to establish his eligibility.

* * *

The petitioner's appellate "Exhibit 1" lists numerous individuals who were "Awarded diplomas" by the , but the source of the list is not specifically identified. Regardless, the petitioner's name does not appear on the "Awarded diplomas" list and there is no documentary evidence demonstrating his receipt of an Academy diploma.

* * *

In addition, there is no evidence showing that the petitioner's candidacy for the diploma was recognized beyond the at a level commensurate with a major, internationally recognized award. Regarding the information submitted from the USCIS need not rely on self-promotional material. *Cf., Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The petitioner's selection to attend summer courses at the is evidence of his pursuit of further educational training in his field, not a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

In response to the above findings, the petitioner states:

It is a decades-old tradition that attendance to the summer courses at the serves as part of their selection process for the high-level diploma. Every

> selected candidate who had already been selected by the was asked and mandated to attend the summer courses in order for the to further continue its selection process for the high-level diploma.

The petitioner does not address or overcome the finding that he attended the in July 2011, more than one year after the petition's May 14, 2010 filing date. Eligibility, however, 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. Regardless, the petitioner's invitation to attend summer courses at the Hague Academy as part of "its selection process for the high-level diploma" is not equivalent to a major, internationally recognized award.

The petitioner submits a list of "Frequently Asked Questions" from the website of the The submitted information states:

> Only those who have attended the summer courses may be allowed to sit for the Diploma.
>
> * * *
>
> At the end of the session, all students who have regularly attended all the courses will receive a certificate of attendance. A few attendees who already have a thoroughly advanced knowledge of international law are allowed to sit for the Diploma examination.

There is no evidence showing that the petitioner has sat for and successfully passed the Diploma examination. Regardless, academic study is not a field of endeavor, but training for a future field of endeavor. Academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest for second preference immigrant visa classification. *See In re New York State Dept. of Transportation*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998). Thus, academic performance is not comparable to the one-time achievement set forth in the regulation at 8 C.F.R. § 204.5(h)(3), implemented to demonstrate an alien's eligibility for the first preference immigrant visa classification. The petitioner has not established that his selection to participate in the summer courses constitutes a major, internationally recognized award in his field.

The petitioner further states:

> Congress used the word "receipt" at 8 C.F.R. § 204.5(h)(3)(i) only and omitted it at 8 C.F.R. § 204.5(h)(3), it can be presumed that there may be aliens of extraordinary ability falling in the purview between "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor" and receipt of "a one-time achievement (that is, a major, internationally recognized award)." Otherwise, there would have been no purpose in specifically including the word "receipt" at 8 C.F.R. § 204.5(h)(3)(i).

The word "receipt" at 8 C.F.R. § 204.5(h)(3)(i) was promulgated by U.S. Citizenship and Immigration Services (USCIS), not Congress. Congress created the statutory authority by enacting section 203(b)(1)(A) of the Act and USCIS promulgated the regulation at 8 C.F.R. § 204.5(h)(3) through the public rulemaking process. The House Report specifically stated: "Recognition can be through a one-time achievement such as *receipt* of the Nobel Prize." [Emphasis added.] *See* H.R. Rep. No. 101-723, 59. Even with the omission of the word "receipt" at 8 C.F.R. § 204.5(h)(3), the petitioner has not submitted evidence that his selection to participate in summer courses at the [redacted] is equivalent to a major, internationally recognized award such as a Nobel Prize. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

III. Evidentiary criteria at 8 C.F.R. § 204.5(h)(3)

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner does not contest the AAO's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims are abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this criterion.

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

With regard to the issue of whether the petitioner meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) based on his invitation to attend the [redacted] the appellate decision indicated that the petitioner attended the academy subsequent to the petition's May 14, 2010 filing date. In addition, the petitioner failed to submit evidence showing that the petitioner's candidacy for a diploma of the [redacted] equates to membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts. Regarding the issue of whether the petitioner's selection to attend the [redacted] is comparable evidence for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4), the AAO's prior decision stated that the petitioner had failed to demonstrate that the regulatory criterion at criterion at 8 C.F.R. § 204.5(h)(3)(ii) is not readily applicable to his occupation. Moreover, the appellate decision stated that petitioner failed to show how his acceptance to the [redacted] is *comparable* to the regulation at 8 C.F.R. §204.5(h)(3)(ii) that requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." The AAO concluded that the

evidence submitted by the petitioner as "comparable," specifically the petitioner's selection to attend the , is not of the same caliber as that required by the regulation.

On motion, the petitioner repeats his previous assertion that his acceptance to the is comparable evidence for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii). The petitioner's motion fails to provide any persuasive legal argument, precedent decisions, or other evidence to establish that the AAO's analysis in that regard was based on an incorrect application of law or USCIS policy. A passing reference without substantive arguments is insufficient to raise that ground in these proceedings. *See Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). In addition, the petitioner has submitted no evidence in support of his assertion that "in the field of international law there are no associations which require outstanding achievements of their members." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In light of the above, the petitioner has not established that he meets the plain language requirements of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii), or that he has submitted qualifying comparable evidence for this criterion.

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

The petitioner does not contest the AAO's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner does not contest the AAO's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he 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.*

With regard to the issue of whether the petitioner meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi), the appellate decision stated:

> [T]he petitioner submitted three scholarly articles that he authored in (Spring 2011), (Summer 2010), and (Summer 2010). The preceding articles were published subsequent to the petition's May 14, 2010 filing date. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N at 49. Accordingly, the AAO will not consider scholarly articles published by the petitioner after May 14, 2010 as evidence to establish his eligibility.

On motion, the petitioner argues: "The petitioner's doctoral dissertation had been published online prior to the petition's filing day." The petitioner submits a copy of his November 25, 2008 dissertation entitled ' ' that he submitted for his doctorate at University School of Law. In addition, the petitioner submits Google Scholar search results and webpages indicating that his dissertation is available on the University School of Law's website at http://digitalcommons.law.ggu.edu. The petitioner also submits information from the school's website stating: "Our Institutional Repository is a digital collection that seeks to capture, organize, and preserve world-wide access to the research and scholarship of our faculty, students, administration, clinics and centers. This IR is created and managed by the Law Library."

According to the information submitted by the petitioner, the "Institutional Repository" is a "digital collection" of theses and dissertations from University School of Law, not a professional or major trade publication. 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." There is no evidence establishing that the "Institutional Repository" maintained by the petitioner's alma mater on its website is a professional or major trade publication, or that the digital collection qualifies as a form of major media.

The petitioner further states: "The scholarly article the petitioner authored in the (Summer 2010) was actually published prior to rather than subsequent to the petition's filing day." The petitioner submits the "Copyright Agreement" for his article entitled ' Program under the 2009 Amendments" that was published in the Summer 2010 Although the petitioner executed the Copyright Agreement on May 1, 2010, there is no evidence showing that his article was published on that date, or that it had been published as of the petition's May 14, 2010 filing date. The Copyright Agreement states:

> The author authorizes the New York State Bar Association's editorial staff to edit and revise the Work prior to publication in the . . . The editor of the will have the opportunity to review any substantive changes and, in his or her discretion, to consult with the author before such Work is published.

The above information in the Copyright Agreement does not support the petitioner's assertion that his article "was actually published prior to . . . the petition's filing day." The submitted documentation fails to demonstrate that the petitioner's article in the Summer 2010 had been published at the time of filing. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N at 49. Accordingly, the Summer 2010 article cannot be considered as evidence to establish the petitioner's eligibility.

The petitioner continues: "The petitioner has partial authorship in the scholarly article '" The petitioner submits a copy of the preceding article that was published in in Spring 2006. The petitioner, however, is not identified as an author of the article. Instead, the article was authored by Dr. In a biographical paragraph about Dr. the article states: "The author and editors . . . would like to thank and acknowledge [the petitioner] for his diligence and effort in locating and translating the numerous Chinese sources cited in this article." 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." [Emphasis added.] Locating and translating source material cited in the article does not constitute the petitioner's "authorship" of the article.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner's "authorship of scholarly *articles* in the field, in professional or major trade *publications* or other major *media*" [emphasis added] in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Without evidence showing his authorship of qualifying scholarly articles in more than one publication or form of major media, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

The petitioner maintains that he has performed in a leading or critical role for the New York City Bar Association (NYCBA). The petitioner submits additional information about the NYCBA,

but the AAO previously determined that the NYCBA has a distinguished reputation. With regard to the issue of whether the petitioner has performed in a leading or critical role for the NYCBA, the AAO discussed the following evidence:

1. A February 2, 2010 letter from the Executive Director of the NYCBA requesting a UN Annual Pass for herself "as Chief Administrative Officer," for [redacted] as "New York Main Representative," and for the petitioner and two others as "New York Additional Representative";
2. A December 21, 2010 letter from the Executive Director of the NYCBA requesting a UN Annual Grounds Pass for herself "as Executive Director/Chief Administrative Officer," for [redacted] as "New York Main Representative," for [redacted] as "President," and for the petitioner and two others as "New York Additional Representative";
3. A December 23, 2011 letter from the Executive Director of the NYCBA requesting a UN Annual Grounds Pass for herself "as Executive Director/Chief Administrative Officer," for [redacted] as "New York Main Representative," and for the petitioner and three others as "New York Additional Representative";
4. A document from the United Nations Non-Governmental Organizations (NGOs) Branch providing information about "Observers to the General High-Level Plenary Meetings, 20-22 September 2010" and stating that representatives of NGOs "can be issued a secondary pass with access to the fourth floor balcony viewing gallery in the General Assembly hall";
5. Three "4th Balcony Only" observer passes for the NGO General Assembly Hall dated "20 SEP '10," "24 SEP '11," and "25 SEP '12"; and
6. A December 30, 2010 United Nations identification card.

The AAO found:

> The three letters from the Executive Director of the NYCBA (items 1 – 3 above) fail to explain how petitioner's role as one of multiple "additional representatives" of the NYCBA at a small number of United Nations meetings was leading or critical to the NYCBA as a whole. In addition, with regard to items 2 – 6 above, this evidence post-dates the filing of the petition. Once again, 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. Accordingly, the AAO will not consider these items as evidence to establish the petitioner's eligibility. The documentation submitted by the petitioner does not differentiate him from the NYCBA's other officers and representatives so as to demonstrate his leading role, and fails establish that he was responsible for the NYCBA's success or standing to a degree consistent with the meaning of "critical role."

On motion, the petitioner states:

> The New York City Bar Association has over 24,000 members. Compared to this, as to a UN Annual Pass, only five such passes can be requested and issued. By designating the petitioner for such a pass, the New York City Bar Association (NYCBA) entitles the

petitioner to interact with UN staff and government representatives on the organization's behalf.

As demonstrated by the evidence already on the record, the petitioner was designated and assigned to represent the New York City Bar Association at one of the most important meetings in the whole world - the United Nations General Assembly high-level general debate sessions, which Presidents and Prime Ministers of 193 member countries of the United Nations (including the President of the United States of America) attend every September. As showed by the evidence already on the record, only one representative per accredited organization is allowed.

As showed by the petitioner's 2010 - 2013 United Nations identification cards on the record, the petitioner has even been continuing in this critical and leading role, along with the Executive Director/Chief Administrative Officer.

Hence, it is clear that the petitioner's role as one of the very few formally designated representatives of the NYCBA to the United Nations was critical and leading to the NYCBA as a whole.

The petitioner submits information from the United Nations Non-Governmental Organization (NGO) Branch regarding the issuance of "Annual Passes":

Each NGO in consultative status with ECOSOC [Economic and Social Council] can designate representatives to obtain passes for the UN premises, valid until 31 December of each year. Grounds passes can be requested following the procedure described below.

A maximum of 5 such passes can be issued for New York, 5 for Geneva, and 5 for Vienna, in addition to the Chief Administrative Officer and the President or Chief Executive (2 additional passes).

The petitioner also submits his 2013 United Nations ECOSOC Grounds Pass, but this credential was issued to him subsequent to the petition's filing date. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N at 49. Accordingly, the 2013 United Nations Grounds Pass cannot be considered as evidence to establish the petitioner's eligibility.

In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. The petitioner has not established that his receipt of a United Nations Annual Grounds Pass translates to a leading or critical role for the NYCBA. For instance, the petitioner failed to submit a letter from an officer of the NYCBA specifying how the petitioner contributed to that association in a way that is significant to the association's outcome or what specific role the petitioner played in the association's activities. While the petitioner asserts that he was "assigned to represent the New York City Bar Association at one of the most important meetings in the whole world - the United Nations General Assembly high-level general debate sessions," there is no evidence indicating

what specific functions the petitioner performed at the United Nations sessions, or how his functions were leading or critical to the NYCBA. In addition, the petitioner did not specify how his role is situated within the NYCBA's organizational hierarchy, or evidence of the role's matching duties from an authorized official of NYCBA. Again, the documentation submitted by the petitioner does not differentiate him from the NYCBA's other officers and representatives so as to demonstrate his leading role, and fails establish that he was responsible for the NYCBA's success or standing to a degree consistent with the meaning of "critical role."

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to submit documentary evidence showing that his role for the NYCBA meets the elements of this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

In light of the above, the petitioner has not established that he meets this criterion.

IV. Conclusion

The petitioner has not demonstrated evidence of a qualifying one-time achievement in the form of a major, internationally recognized award, and has failed to satisfy the antecedent regulatory requirement of three categories of evidence. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 AAO's June 21, 2013 decision dismissing the appeal is affirmed. The petition will remain denied.