

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

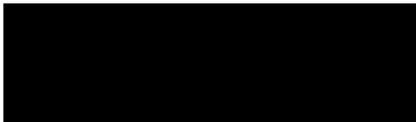


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 30 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O).

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, recommended denial of the petition and certified her decision to the Administrative Appeals Office (AAO) for review, pursuant to 8 C.F.R. § 103.4(a)(5). The AAO will affirm the director's decision and deny the petition.

The petitioner, a university, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien of extraordinary ability in the sciences. The petitioner seeks to employ the beneficiary as an [REDACTED] for a period of three years.

On December 14, 2009, the director recommended denial of the petition, concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" and is one of the small percentage who has risen to the very top of her field of endeavor. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

The director certified her decision to the AAO and advised the petitioner that it had 30 days in which to submit a brief or other written statement to the AAO. Counsel has submitted a detailed brief for the AAO's consideration.

Counsel asserts that the director's decision to deny the petition is "based on a blatant misreading and mischaracterization of the evidence." Counsel contends that the petitioner's evidence establishes by a preponderance of the evidence that the beneficiary meets four of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

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, and seeks to enter the United States to continue work in the area of extraordinary ability

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts). In a policy memorandum, the legacy Immigration and Naturalization Service emphasized: "It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession." Memorandum, Lawrence Weinig, Acting Asst. Comm'r., Immigration and Naturalization Service, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

With respect to the field of education, the AAO notes that the drafters of the regulation considered public comment on the application of the O-1 classification to university and college professors and declined to lower the standard:

One commenter suggested that the O-1 criteria for university and college professors are excessive and should be altered. The Service will not adopt this suggestion since the O-1 category is reserved for those aliens who have reached the very top of their occupation or profession. The standard for the classification as created by Congress was designed to be extremely high and limited to only the best individuals employed in a particular field.

59 FR 41818, 41820 (August 15, 1994).

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) 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 or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

- (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-I classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach recently set forth in a decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three

out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary ability" as "one of that small percentage who have risen to the very top of the field of endeavor."

Although the decision predates the director's certification, the AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has submitted evidence pertaining to four of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of her field or that she has sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. The Beneficiary's Eligibility under the Evidentiary Criteria

The beneficiary in this matter is a native and citizen of Mongolia. The beneficiary holds a Ph.D. in Political Science from the University of Hawaii that was conferred in 2007, approximately two years before the filing of this petition. The beneficiary also holds a Master's degree in Public Administration from the University of Hawaii (2002) and a Bachelor's degree in English and Russian Language and English Literature from the

Foreign Language Institute in Mongolia (1995). At the time of filing, the beneficiary was working as a postdoctoral research fellow for the petitioner's [REDACTED]. The record reflects that the beneficiary was last admitted to the United States on March 29, 2009 in J-1 classification as an exchange visitor, subject to the 2-year foreign residence requirement at section 212(e) of the Act.¹

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in the social sciences, specifically as an assistant professor who is a "nationally and internationally-recognized expert on the politics, law and the cultural geography of Mongolia." The petitioner initially submitted a job offer for the beneficiary, the beneficiary's résumé, the beneficiary's dissertation, articles authored by the beneficiary, information regarding the petitioner, the beneficiary's educational diplomas, and eleven letters of recommendation. In response to a Request for Evidence ("RFE") dated November 25, 2009, the petitioner submitted a supplemental letter, an updated list of publications, evidence of pending publication offers, and other supporting evidence. Subsequent to its initial response to the director's RFE on December 1, 2009, the petitioner provided four additional testimonial letters which were not incorporated into the record of proceeding prior to the director's decision. The AAO has obtained a copy of this supplemental evidence and has considered the totality of the evidence in rendering its decision.

On December 14, 2009, the director denied the petition, finding that the beneficiary meets only one of the eight regulatory criteria for establishing sustained national or international acclaim at 8 C.F.R. § 214.2(o)(3)(iii)(B). On appeal, counsel contends that the beneficiary meets at least four of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B); specifically, 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(4), (5), (6) and (7). As counsel implies that the beneficiary may satisfy other criteria, the AAO will weigh the submitted evidence against all criteria set forth at 8 § C.F.R. 214.2(o)(3)(iii).

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained" national or international acclaim and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* There is no evidence that the beneficiary has received any major awards in her field, and the petitioner does not claim that the beneficiary meets this criterion.

¹ As will be discussed in the conclusion, the AAO recognizes that because the beneficiary is a J-1 exchange alien subject to the 2-year foreign residence requirement, her immigration options are effectively restricted solely to petitioning for the O-1 nonimmigrant classification.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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

To meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the petitioner must submit evidence that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in the field. The petitioner does not claim that the beneficiary meets this criterion, but does note that she has been the recipient of numerous full tuition grants and scholarships and two research travel grants during the course of her academic career.

While they may be prestigious, research grants, scholarships and other sources of competitive financial support are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. We cannot conclude that receiving funding for one's research and academic training constitutes receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to students seeking to further their research, training and experience. Academic awards and honors received while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field.

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

The petitioner does not claim that the beneficiary meets this criterion, nor has it submitted any documentary evidence that purports to meet this criterion. Based on the evidence submitted, it is not apparent that the beneficiary is a member in any associations in her field, much less a member of an organization that requires outstanding achievements of its members. The petitioner has therefore not satisfied the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

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

The petitioner does not claim that the beneficiary meets this criterion, and the record is devoid of any evidence that either the beneficiary or her work in her field of endeavor has been recognized in professional publications, trade publications or major media outlets. The petitioner has therefore not provided evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

4. *Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which the classification is sought.*

Counsel claims that the beneficiary meets this criterion. First, counsel emphasizes that the beneficiary has served on the peer review panel [REDACTED]. The petitioner submits a letter dated May 12, 2008 from [REDACTED]. [REDACTED] indicates that the [REDACTED] is published annually by the Mongolian Institute of International Studies and "offers the most authoritative articles by leading scholars of Mongolia and public officials on foreign policy, politics, and economics in Mongolia." He states that the beneficiary has served as a "periodic peer reviewer" for the journal since 2003 and "most recently reviewed this summer several articles submitted for publication in the upcoming year." Counsel asserts that the beneficiary "judges the work of others to determine its suitability for publication," and emphasized that [REDACTED] recognized that the beneficiary as "one of the preeminent political scientists in Mongolia on the politics of nomadism in post-Soviet Mongolia."

Second, counsel emphasized that the beneficiary "has served on a panel at an international conference of [REDACTED] where, as the principle commenter, she judged and critiqued the work of others in the field of nomadism, land privatization and post-Soviet development." Counsel emphasized that the [REDACTED] "is the most preeminent organization of scholars who study Central Eurasia, and its history, languages, cultures, and modern states and societies." The petitioner submitted the table of contents and list of panels relating to the Tenth Annual Conference of the Central Eurasian Studies Society, held at the University of Toronto from October 8 through October 11, 2009. The beneficiary is listed as the [REDACTED] for the panel titled [REDACTED] held from 11:00 to 12:45 on October 11, 2009. The other participants in the panel were presenting work in "Modernization, Markets, and Shuttle Trade as Alternatives to Pastoral Nomadism in Contemporary Inner Asia"; "Uzbek Migrants to Turkey"; and "Herders, Reformers, and Rescaling Governance in Pastoral Kyrgyzstan." Counsel emphasized that, as a discussant, the beneficiary critiqued the work of others. Counsel asserted that the role of discussant on panels at academic conferences "is assigned to established scholars in their field, who critique the work of junior scholars." The petitioner submitted published material from the Association for Higher Education which discusses the "role of the discussant."

Finally, counsel asserts that the beneficiary reviews policy proposals related to land privatization for the [REDACTED] in Mongolia. The petitioner submits a letter from [REDACTED] of the Mongolian Administration of Land Affairs, Geodesy and Cartography (ALAGaC). [REDACTED] states that, due to the beneficiary's "rising prominence, ALAGaC has . . . regularly consulted with her as to issues related to land privatization and particularly the impact of land privatization on nomadism in Mongolia." [REDACTED] further states:

As part of [the beneficiary's] work as a consultant with ALAGaC, she has reviewed policy proposals and position papers to judge the impact of such proposals on the sustainability of nomadic pastoralism, and the accompanying concerns of urbanization as herding families leave herding for perceived opportunities near city centers.

Additionally, [the beneficiary's] comparative knowledge of nomadism in other post-Soviet and Inner Asian countries has been invaluable in helping Mongolia attempt to avoid some of the policy courses that have all but destroyed pastoralism in other parts of Inner Asia.

Based on this evidence, the director determined, without comment, that the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) had been satisfied. The AAO agrees that the evidence submitted satisfies the plain language of this evidentiary criterion. This finding is based on the beneficiary's role as a peer reviewer for the [REDACTED] and based on her role as discussant at the 2009 [REDACTED]

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

At the time of filing, the petitioner submitted eleven (11) letters intended to establish that the beneficiary meets the criterion for having made original scholarly contributions of major significance in the field, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Counsel asserted, specifically, that the beneficiary "has made contributions of major significance in the field of politics, law and cultural geography in post-Soviet Mongolia," and is deemed by her peers as having made "a significant contribution to academic understandings of Mongolia, and post-Soviet transitions."

(a) *A Review of the Letters*

Professor [REDACTED], a tenured law professor at New York University School of Law, states:

Although still a junior scholar, [the beneficiary's] PhD dissertation . . . demonstrates that she is already an exceptional scholar in two distinct fields of special importance to American scholarship and national security. These fields are law and development and Mongolian studies. . . .

As to law and development, she combines the study of property rights with a deep knowledge of the evolution of Mongolian society. . . . [T]he processes she describes in her dissertation will be of great interest and importance in evaluating and planning similar transitions in land rights in countries as apparently far removed as Sub-Saharan Africa or South Asia.

Furthermore, and of crucial importance in terms of her qualifications for a visa, she is the only person I know writing about these issues in English. . . . I know of no one with anywhere close to [the beneficiary's] expertise and perspective on land rights in Mongolia proper. . . .

[REDACTED] acknowledges that he is not an expert authority with respect to Mongolia, but states that he believes that the beneficiary's importance in the area of Mongolian studies "is equally great." He states that he is convinced that the beneficiary "is the best scholar of contemporary Mongolian politics" and "the only person working on the central issues of Mongolian law and politics" of which he is aware. He notes that her experience in Mongolia would be "impossible for any American citizen to match," and that it would be "in the national interest of the United States to enable her to stay here and contribute to our knowledge about this important region of the world."

██████████ at the University of Hawaii, states that the beneficiary "is able to research and write at a level comparable to the best scholarship on Mongolia," and indicates that the beneficiary "is making a genuine contribution to both Mongolian society and higher education" through her research on nomadic culture building in Mongolia, a field of research that is rare. ██████████ explains that "increasing globalization is forcing peoples all over the world to re-formulate land discourse by re-situating them in a world view which is increasingly about limits, multiple uses and sustainability." ██████████ also indicates that "[the beneficiary's] work is itself situated at this intersect of important issues and perspectives."

██████████ Associate Professor of Political Science at the University of Hawaii, and a member of the beneficiary's dissertation committee, states that the beneficiary's "exploration of nomadism, urbanization and development in Mongolia and Central Asia in general are unique in the United States." He further states:

Mongolia, like other Central Asian states is finding its place in the region and the world after decades of being a Soviet client state. Part of this fast-paced development is the integration of market principles into a traditional society based on nomadic lifestyles. As [the beneficiary] has begun to show in her work, this social transformation is not only a challenge for individuals and households in their adaptation to the presence of new globally connected economics in Mongolia, but also for the Mongolian state in managing the development of natural resources and the resulting environmental externalities.

It is this second aspect of [the beneficiary's] work that I think is the most promising and the most important for the scholarly community to nurture. . . . [The beneficiary's] dissertation and book manuscript have revealed to her a hidden crisis in Mongolia surrounding the development of the mining industry. According to her field research, the growth of the mining industry. . . .

This hidden environmental crises is not unique to Mongolia, but common to many of the emerging energy-based economies of Central Asia. . . .

These challenges of environmental security lie largely below the scope of American scholarship because of difficulty of access. It is for this reason why I feel so strongly that [the beneficiary] is unique in her contributions to both American scholarship, as well as to U.S. foreign policy. As a Mongolian national, [the beneficiary] is especially well positioned to examine the growing environmental challenges in Central Asia.

██████████ an ██████████ Professor of Law at Yale University School of Law, states that the beneficiary's doctoral dissertation is "an amazing case study of a national mythology, in which she explores the genesis and maintenance of the self-identification of Mongolians with 'nomadism'. . . ." Regarding the beneficiary, Professor Rose states:

[The beneficiary] can play a tremendously valuable role in the U.S. academic world. First, she is uniquely situated to bring knowledge of modern Mongolia to an American audience. . . . [The beneficiary's] insightful work will be a revelation to American scholars of these issues. She has a deep understanding of the culture, history and modern economy of that country, combined with complete fluency in English. I have read widely in the literature in English on international rural economic development, and I can attest that in that field, any scholarship at all on Mongolia is very thin indeed – much less scholarship with the depth of [the beneficiary's].

Second, and perhaps even more important, [the beneficiary] brings a hands-on knowledge of the development prospects and problems of a post-Soviet state, and in that sense her knowledge can translate well outside of Mongolia. The introduction of unfamiliar free-market ideas, the sometimes unwelcome intrusion of international financial institutions and NGOs, the patterns of favoritism and corruption, the new urbanization and displacement of established employment and land use patterns, the environmental issues accompanying mining and tourism – all these are issues that [the beneficiary] has documented and analyzed in Mongolia, and that can have form [*sic*] the basis for tremendously useful comparative analyses with other post-Soviet political economies.

[redacted] at the Asia-Pacific Center for Security Studies in Honolulu, Hawaii, indicates that the beneficiary contributed a chapter to a book that he co-edited. [redacted] states that the beneficiary's chapter was "a brilliant comparative study of Mongolian and Central Asian Democratic transformations," and displayed the beneficiary's "first-hand knowledge of post-Communist nations like Mongolia and her phenomenal grasp of Western political thought." He further states:

[The beneficiary] has a great scholarly future. She can contribute immensely to the advancement of social sciences in the United States through her great talents, depth and total dedication to the accomplishment of her scholarly ambitions and goals.

[redacted] at the University of Hawaii and chairperson of the beneficiary's dissertation committee, states:

In one quite obvious way, [the beneficiary] has already risen to the top of her field. There are at most a handful of scholars doing this kind of law and social science research on Mongolia. Its location near China in particular makes Mongolia an extraordinarily important research site for understanding the interplay of land regime, globalization, and population shift. This aspect of Mongolian politics and society has barely emerged as a source of inquiry. [The beneficiary's] dissertation standing alone makes a major contribution. Its focus on Mongolia makes the work a major contribution to area studies analysis in both China and Central Asia.

Her research is also a major and unique contribution to the law and social science field in ways that transcend the focus on Mongolia. . . . I cannot identify any other scholar who focuses on Mongolia. From a law and social science perspective her analysis of nomadism is

a novel perspective because of its focus on the role that the nomad as symbol plays in the ways Mongolian leaders govern.

In sum, [the beneficiary's] contributions are original and exceptionally significant for three reasons. First, her work focuses on an increasingly significant country that only a handful of people study. Second, she brings an original understanding to the role of nomadism in governance. Third, as her faculty position at University of Arizona implies, her work manifests a unique and cross-disciplinary synthesis of work in cultural geography, politics, socio-legal analysis and Mongolian area studies.

[REDACTED] at the University of Wisconsin – Madison, states that he has reviewed the beneficiary's work and finds her eligible for classification as an alien of extraordinary ability in the field of Mongolian studies. Specifically, he states:

Although [the beneficiary] has just received her doctorate in 2007, she has already established herself as one of the leading political scientists studying post-[S]oviet Mongolia. . . . This work has clear policy implications, and [the beneficiary] is one of few scholars in the US with the background and training to speak to these issues. Her critical analytical approach to the subject is missing in much of the (much less well-informed) realpolitik treatments of the subject.

Her dissertation work is similarly first-rate. The topic of nomadism and the transformation of land tenure systems in Mongolia following the socialist era is clearly crucial to any understanding of the politics surrounding Mongolia's post-socialist transformations, yet very little in the way of grounded fieldwork has been done in this research areas. . . . Because [the beneficiary] is a Mongolian whose everyday life was involved in these issues, she is in a unique position to analyze the processes and politics at work in remaking Mongolian identity and how this relates to issues of land ownership, privatization and land tenure. . . . [H]er critical analysis of the uses of the category 'nomad' associated with the political transformations related to land ownership and land tenure is first-rate; a fine-grained qualitative study that goes well-beyond the standard qualitative spatial-analytical approaches to this topic.

The petitioner also submitted a letter from [REDACTED] at Pepperdine University. [REDACTED] identifies himself as "one of a very limited number of Mongolian studies experts in the United States focusing on identity issues and nomadic adaptation to post-Marxist Leninist socio-economic and political realities." He indicates that the beneficiary "has already published several pieces that have influenced the field." Specifically, [REDACTED] states:

Her work on "Legacy of Sovietism in Mongolia" (2006) is particularly important, as very few western scholars have the language skills enabling access to this specific data or textured understandings of the history of that state.

Her dissertation [redacted]; the [redacted] and [redacted] [redacted] (2007) contributes to a growing field of study revolving around nomadic peoples and their adaptation to new globalized fields of culture, economics, and politics. At a recent conference on nomadism and modern societies (sponsored by the University of Halle in Germany), [the beneficiary's] work was mentioned repeatedly.

[redacted] concluded by stating that "if recently scholarly efforts are an indication of future contributions, [the beneficiary's] academic career is in rapid ascent [*sic*]."

The petitioner submitted a letter from [redacted] Program at the University of Hawaii and also a member of the beneficiary's dissertation committee. He indicates that "the level of in-country scholarship is quite low" in Mongolia, and that the beneficiary's dissertation will likely result in a book that will "find international acceptance among those concerned about Mongolia's trajectory in the post-Soviet period," and also "raise the bar for Mongolian scholars."

[redacted] opines that there are "too few scholarly resources available for American academics and policy makers to understand Mongolia's complexities," and that the beneficiary "will be one of a small number making up a new generation of scholars whose work will reshape what we know." He discusses the beneficiary's dissertation and declares that it is "a substantial contribution to both our understandings of Mongolian society and to American higher education through this work and the work that is sure to follow."

[redacted] praises the beneficiary's intellect, language and social skills and states that "her insightful dissertation demonstrates the promise of her future contributions."

The petitioner also submitted the above-referenced letters of recommendation from [redacted] and [redacted]. [redacted] states that the beneficiary has become "one of the preeminent political scientists in Mongolia on the politics of nomadism in post-Soviet Mongolia," whose work "promises to contribute greatly to academic understandings of how calls to nomadism distort and shape political dialogue on land privatization." He further opines that the beneficiary's forthcoming book "promises to help reshape academic understanding of both domestic and international political discourse on Mongolia in the post-Soviet era." [redacted] states that the beneficiary's knowledge of Mongolia "is unparalleled among international scholars of nomadism and she is thus uniquely situated among the top scholars both nationally and internationally in her field."

In a supplemental response to the RFE, the petitioner provided additional letters from [redacted] California State University, Long Beach; [redacted] City University of New York; [redacted] of Aberystwyth University, United Kingdom; and [redacted] of Miami University.

[redacted] states that the beneficiary has made "excellent contributions to the field of Geography." He indicates that he knows the beneficiary "through her important work on the intersection of geography and identity politics in Mongolia, including her dissertation and forthcoming book [redacted]."

He further states:

I can attest that [the beneficiary's] exceptional work is unique and contributes greatly to understanding the role of nomadic discourse in shaping both identity and development in

Mongolia. Indeed, before [the beneficiary's] groundbreaking work, no scholar had identified, much less sought to explain, the persistence of the nomadic myth in shaping both internal politics and international development efforts in Mongolia. Most academic and policy makers had simply assumed the myth to be true. [The beneficiary] has transformed the way Mongolia must be viewed and her work should reshape academic and policy-maker debate over development in Mongolia. As a result, [the beneficiary's] influential work on Mongolia resonates well beyond the boundaries of that country and should be picked up by scholars working across Asia more broadly and across the field of Geography more specifically. There is no doubt that her work will be groundbreaking in more than just the area of Mongolian and Asian Studies.

concludes by stating that the beneficiary "is simply unparalleled in her knowledge of Mongolia among scholars working in the same area and is rightly viewed as a star."

states that the beneficiary "has a fresh and unique voice in the scholarship not only of Mongolia, but also of development and property rights." She further states:

She has emerged in short order as brilliant and distinctive voice on development, focused particularly on the subtle and complex forms of property rights in modern Mongolian society and on lands used for agriculture, forestry and animal husbandry. Having written on the political ecologies of such lands in Africa, I have found [the beneficiary's] work a major contribution to our larger understanding of the existing relationships to land and resources which do not fit easily into Western property rights regimes. . . .

states that she places the beneficiary "among the most exciting scholars on development and property rights to emerge in years."

states that he attended the beneficiary's presentation at the Central Eurasian Society's Annual Conference in September 2008. states that her presentation was "remarkable" and that her dissertation and forthcoming book "demonstrate that [the beneficiary] has made and is making a significant contribution to the field of politics and cultural geography." indicates that he intends to use the beneficiary's work in his seminar on the "Geography of the Silk Road." He describes the beneficiary's work as unique and states that "she has already become a leading expert both in understanding nomadic myth, identity and discourse and how they impact present day development in Mongolia. He concludes by stating that the beneficiary's "contribution to the cultural geography of Central Asia is important."

Finally, describes the beneficiary as "a rising scholar among a very select group who write on the cultural and political geography of Mongolia." further states:

While [the beneficiary] is at an early stage in her career she already has an international reputation: her life experience, academic qualifications and penetrating intellect qualify her as a member of a select group of experts who can help to deconstruct the nomadic stereotype of

Mongolian [sic] that permeates the Western consciousness and foster deeper understanding of the politics and cultural geography of Mongolia. . . .

Based on this testimonial evidence, counsel asserted that "numerous experts who know [the beneficiary] through her work attest to the contributions of major significance that she has made in her field," which counsel claims is "a significant contribution to academic understandings of post-Soviet Mongolia."

(b) Analysis

In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of "original scientific, scholarly, or business-related contributions of major significance in the field." 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The director determined that the evidence submitted did not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The director found that the beneficiary "has yet to make original scholarly contributions of major significance to the field." Rather, the director concluded that the evidence suggested that the beneficiary has the ability to make such a contribution in the future. In addition, the director observed that the testimonials, speaking primarily to the beneficiary's talent and abilities, are largely from individuals with whom the beneficiary has worked. The director also noted that the letters make broad assertions to the importance of the beneficiary's work, but fail to detail any changes the beneficiary's work has made to the field as a whole.

In her brief, counsel asserts that the director misidentified the letters as coming primarily from prior colleagues or supervisors and mischaracterized the content of the letters. Counsel asserts that, while many experts did indicate expect that the beneficiary will continue to make contributions to her field, "they also unequivocally stated that she has already made significant contributions." Counsel contends that the director reached an incorrect conclusion and supported it by taking selective quotes from the testimonial letters out of context. Counsel asserts that the beneficiary is described as "having transformed her field," and meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Upon review, the AAO agrees with the director. However, as a preliminary matter, the AAO will withdraw the director's observation that the letters are largely from individuals with whom the beneficiary has worked. While the AAO cannot tell with absolute certainty, the record appears to include five letters from individuals that clearly worked with the beneficiary. The remaining authors do not appear to have worked with the beneficiary and know her through her publications.

The AAO will first address counsel's assertion that the director deliberately mischaracterized the opinions of experts providing testimonial letters by taking selective quotes out of context to support USCIS' position. For the purposes of applying the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) to the testimony presented, the director was reasonably seeking confirmation that the beneficiary's existing body of work is both original and of major significance, such that her original contributions have already made a substantial and recognizable national or international impact in the field. In viewing the letters from this point of view,

the director reasonably concluded that the opinion of experts in the field is that the beneficiary has great talent and ability, possesses an unusual combination of research interests and experience not commonly found in the field, and has the potential to contribute to the social sciences in several fields. The director did not merely dismiss portions of the letters which did not support her conclusion, but rather, concluded that "the testimonials also make broad assertions to the importance of the beneficiary's work, but fail to detail any changes the beneficiary's work has made to the field as a whole."

The AAO agrees that the testimonial letters do not adequately describe with specificity any original contribution of major significance in the field. While the beneficiary has published results of her research, the record does not show how her research is considered of "major significance" in the field, or that it has been widely recognized as such. Any Ph.D. dissertation or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook* on "Postsecondary Teacher," available at <http://www.bls.gov/oco/ocos066.htm> (copy incorporated into the record). It does not follow that 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.

The petitioner asserts that there are very few researchers performing work on nomadism, law and cultural geography in post-Soviet Mongolia, and even fewer who are fluent in English. [REDACTED] opines that the beneficiary has "already risen to the top of her field" because "[t]here are at most a handful of scholars doing this kind of law and social science research on Mongolia." The fact that relatively few scholars focus their research on modern Mongolian legal, cultural and political issues does not necessarily render published research in this area an original contribution of major significance. The letters also stress the geopolitical significance of Mongolia, both within Central Asia and as a matter of U.S. foreign policy. Arguments about the importance of a given field of endeavor, or the urgency of an issue facing the United States, will not by themselves establish that the beneficiary's scholarship in these areas is of "major significance."

While the beneficiary's work has been characterized as making "a substantial contribution to our understanding of modern Mongolian society," there is insufficient evidence to support a finding that the beneficiary's work has already made a major contribution to the field. For example, [REDACTED] states that the beneficiary "has transformed the way Mongolia must be viewed" and speculates that her work "should reshape academic and policy-maker debate over development in Mongolia," and "should be picked up by scholars working across Asia more broadly and across the field of Geography more specifically." [REDACTED] states that she has found the beneficiary's work to be "a major contribution to our larger understanding of the existing relationships to land and resources which do not fit easily into Western property rights regimes," but she has not explained or illustrated how the beneficiary's work has impacted the field. [REDACTED] states that the beneficiary's "contribution to the cultural geography of Central Asia is important," but does not describe the scope and nature of the contribution or indicate that the beneficiary's contribution has been recognized as influential in the 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).

While those familiar with her work may generally describe the beneficiary's work as "groundbreaking," there is no indication that the beneficiary's work is of major significance. If, as [REDACTED] states, the beneficiary has "transformed the way Mongolia must be viewed," then it is reasonable to expect to see that transformation reflected in some tangible way in the field at large. The lack of supporting evidence and repeated speculation about the future impact of the beneficiary's work gives the AAO no basis to gauge the significance of the beneficiary's present contribution and undermines the claim that the beneficiary has already made a contribution of major significance.

As noted by the director, many of the letters proffered do in fact discuss far more persuasively the future promise of the beneficiary's research and the impact that may result from her work, rather than how her past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 45, 49. The assertion that the beneficiary's research results are likely to be influential is not adequate to establish that her findings are already recognized or acclaimed as major contributions in the field. While the experts who have read the beneficiary's dissertation deem the beneficiary's research findings to be both novel and of great potential interest and import within several social science fields, the fact remains that any measurable impact that results from the beneficiary's research will likely occur in the future.

The phrase "major significance" is not defined in the statute or regulations. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Looking to the applicable dictionary definition, the word "major" is defined as "greater in importance or rank." Webster's New World College Dictionary 867 (4th Ed. 2008). The word "significance" is defined as "importance, consequence, moment." *Id.* at 1334. While these letters discuss the value of the beneficiary's relatively small body of existing work, there is no evidence that it constitutes an original contribution of "major significance" in her field.

In conclusion, the most compelling letter submitted by the petitioner was authored by [REDACTED] Associate Professor of Geography at Pepperdine University. [REDACTED] identifies himself as a Mongolian studies expert and indicates that the beneficiary "has already published several pieces that have influenced the field." [REDACTED] states that the beneficiary's research "contributes to a growing field of study revolving around nomadic peoples and their adaptation to new globalized fields of culture, economics, and politics." [REDACTED] also notes that he is familiar with the beneficiary's work on [REDACTED] in Mongolia" (2006) and calls it important because few western scholars have the language skills needed to review the data or textured understandings of the history of that state. He also identified her dissertation "[REDACTED] Mongolia and [REDACTED]" (2007) as a contribution to the growing field of study revolving around nomadic peoples and their adaptation to new globalized fields of culture, economics, and politics. Finally, although he does not provide specifics, he noted that her work was "mentioned repeatedly" at a conference on nomadism and modern societies that had been sponsored by the University of Halle in Germany.

Upon review, even the most compelling letter does not meet the plain language of the regulatory criteria. The lack of specifics in the letter prevents the AAO from finding the criteria to be satisfied. Although the beneficiary's work may have been mentioned repeatedly at a conference, there is no statement as to whether

the work was discussed in a positive or negative light or otherwise deemed to be of major significance. Nor does the author explain how he has applied the beneficiary's research in his own work. And while the author identifies the research as contributions to his field, he fails to articulate how or why it should be seen as a contribution of major significance. [REDACTED] uncorroborated statements suggest that the beneficiary's work is important, timely, relevant, and a useful complement to comparable research in the field, but not to the extent that it would be considered of "major significance" within the field.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 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. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility.² *Id.*; *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"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Without additional, specific evidence showing that the beneficiary's work has been influential, highly acclaimed throughout her field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that she meets this criterion.

(6) *Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media*

The petitioner submitted evidence showing that, as of the date of filing, the beneficiary had published two articles and one book chapter. The articles were published in 1999 and 2003, respectively, and the book chapter was published in 2006. The petitioner also provided a list of the beneficiary's selected conference presentations between the years 1997 and 2009. The petitioner indicated that the beneficiary has a book forthcoming, as well as an additional journal article to be published in the *Asian Pacific Law & Policy Journal* in 2010.

Counsel also indicated that the beneficiary has received offers to publish her book manuscript, [REDACTED], from two academic publishers and "has yet to settle on a final publisher." Counsel emphasized that her dissertation of the same title "has already been published by ProQuest and is available in digital and microform in libraries across the United States."

² The Board of Immigration Appeals (the Board) has held 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 cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility).

The director determined that the beneficiary does not meet this criterion. In reaching this conclusion, the director noted that the regulations clearly require evidence of authorship of articles in the field in professional journals or other major media. The director did not consider the beneficiary's anticipated book and journal publications, noting that the petitioner must establish eligibility for this criterion at the time of filing. Moreover, the director emphasized that the beneficiary's presentations at conferences are not considered published articles in professional journals. The director acknowledged that the petitioner submitted reviews for the book to which the beneficiary contributed a chapter; however, the director noted that "the book reviews fail to mention the beneficiary's work in particular or its significance." The director further emphasized that the petitioner failed to provide the number of times the beneficiary's articles have been cited. The director concluded that "it has not been established that her articles have significantly influenced other individuals in the field in a manner consistent with sustained national or international acclaim."

Upon review, the AAO finds that the evidence submitted satisfies the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) based on the beneficiary's publication of two scholarly articles and one book chapter. The weight to be given to the beneficiary's body of published work will be considered below in our final merits determination.

However, the AAO notes that the director properly excluded from consideration the two publications that have been identified as "forthcoming." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The publication of the beneficiary's doctorate dissertation on ProQuest, a web site repository that has published two million other theses and dissertations, with no apparent selection process for publication, does not amount to the publication of a scholarly article in a professional journal or other major media. The fact that the beneficiary will eventually publish the dissertation in book format is irrelevant for the purposes of meeting the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) as of the date of filing.

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

At the time of filing, counsel stated that the beneficiary has been employed in an essential capacity with the petitioner as the University's only expert on the politics, law and cultural geography of post-Soviet Mongolia. Counsel emphasized that the petitioner's [REDACTED] is among the top 20 Ph.D. granting Departments of Geography in the United States, and employs "a number of award-winning teachers." Counsel stated that the beneficiary "is an exceptional professor within an exceptional college of a top-ranked University, where she serves in an essential capacity as the University's only expert on the politics, law and cultural geography of post-Socialist Mongolia."

In the RFE, the director acknowledged the petitioner's claim, but noted that "as an Assistant Professor, the beneficiary plays a supporting role for the university as a whole, rather than a critical or essential role as required

by this criterion."³ The director advised that "the fact that an individual is the only individual with knowledge in a certain subject or field is not sufficient to establish a critical or essential role."

In response, counsel stated:

The RFE seems to suggest that although the petitioner has established that [the beneficiary] is the University's only expert on the politics of contemporary Mongolia, the petitioner has not shown that it is critical or essential for the University to have a scholar with [the beneficiary's] expertise. The petitioner submitted abundant evidence, however, of the critical nature of [the beneficiary's] work and of Mongolia's geopolitical significance.

Counsel asserted that "the critical importance of the beneficiary's work was confirmed by a number of outside experts," and by the petitioner. The petitioner submitted a letter dated November 30, 2009 from [redacted] director of the petitioner's School of Geography and Development. [redacted] explained that, while the school has faculty members with expertise in Europe, Latin America, South Asia, Russia, and the Middle East, it was without a specialist in Mongolia and East Asia for several years until the beneficiary joined the school as a post-doctoral researcher. He states that the beneficiary "has thus filled a critical role on the faculty that would otherwise be left unfilled." [redacted] indicated that the beneficiary's "substantive work on the politics of land privatization, development, and environmental security in post-Soviet states complements others in the School who work on similar issues in other parts of the world."

[redacted] further stated that the beneficiary's appointment to the position of assistant professor will "permanently fill our need for an East Asia specialist," and "fill critical course needs and supervisory responsibilities over graduate students that we were unable to fill prior to her arrival." In addition, he emphasized that the beneficiary's work is critically important to the United States "given Mongolia's geopolitical significance."

The director determined that the petitioner had not submitted sufficient evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The director acknowledged that the petitioning university has a distinguished reputation. However, the director found that [redacted] letter focused primarily on the beneficiary's future role as an Assistant Professor, and failed to provide sufficient evidence to demonstrate that the beneficiary's role as a post doctoral researcher was critical or essential to the university as a whole.

The director also acknowledged that the record reflects that the beneficiary has served as a consultant to the Mongolian Office of Administration of Land Affairs, Geodesy and Cartography. The director found that the petitioner had not established that the beneficiary's role as a consultant was in a critical or essential capacity.

In her brief, counsel for the petitioner asserts that [redacted] letter, when properly read, establishes that [the beneficiary] has already been employed in a critical or essential capacity at [the petitioning university]." Counsel further disputes the director's finding that the petitioner failed to establish that the beneficiary's role as a post-doctoral researcher was in a critical or essential capacity, stating:

³ The AAO notes that the beneficiary has not been employed by the petitioner as an Assistant Professor. Her prior experience with the petitioning university is as a Post-Doctoral Research Fellow.

This statement is difficult to comprehend as departments in universities do not exist in vacuums. Rather, a significant contribution to any department of a university is by definition important to the university as a whole. This is particular [*sic*] true in the case of the School of Geography and Development, which – as one of the largest graduate programs in the country – is one of the flagship departments at [the petitioning university].

Counsel states that the petitioner provided evidence in the form of testimonial letters "explaining the critical importance of [the beneficiary's] work on post-Soviet Mongolia beyond the University of Arizona to the nation as a whole."

Counsel further asserts that the director erred by finding that the beneficiary's role as a consultant to the Mongolian government was not in a critical or essential capacity. Counsel notes that, according to [redacted] the beneficiary has been "invaluable in helping Mongolia attempt to avoid some of the policy courses that have all but destroyed pastoralism in other parts of Inner Asia."

Upon review, the AAO concurs with the director that the evidence submitted does not meet this criterion. At issue for this criterion are the position the beneficiary was selected to fill and the reputation of the entity that selected her.

The AAO does not question that the University of Arizona and its School of Geography and Development enjoy a distinguished reputation. Employment with the petitioning university is evidence of a degree of recognition. However, while the beneficiary has clearly been able to provide expertise in an academic area in which there may be a paucity of qualified researchers, there is no evidence that her role as a post-doctoral researcher was essential or critical for the university. This subordinate role is designed to provide research training for a future professional career in the field of endeavor. The petitioner's evidence does not demonstrate how the beneficiary's post-doctoral role differentiated her from the other post-doctoral researchers/fellows at the university, let alone from its tenured faculty. The documentation submitted by the petitioner does not establish that the beneficiary was responsible for the success or standing of the petitioner's School of Geography and Development to a degree consistent with the meaning of "essential or critical capacity."

While counsel, the petitioner, and the expert testimonials have attested to both the critical role the beneficiary fills within the petitioner's School of Geography as its only Mongolia expert, and the critical nature of the beneficiary's research from a national interest and geopolitical standpoint, these considerations go beyond the scope of this evidentiary criterion, which must focus on the beneficiary and the relative importance of her position within the scope of the organizations that have employed her. The fact that the beneficiary's placement among its faculty allows the university to offer coursework which it would not otherwise be able to offer does not elevate her role to one that would be considered critical or essential.

We concur with the director that the beneficiary's employment as a post-doctoral researcher, while of great value to the petitioning university for a variety of reasons, is not considered employment in a "critical or essential capacity" as would be the position of a department head or lead researcher on major projects within the university.

With respect to the beneficiary's position as a consultant to the Mongolian government, the AAO notes that the petitioner has not previously claimed that the beneficiary meets this criterion based on this role. The record contains little information regarding the nature and extent of her responsibilities and the circumstances in which she has served as a consultant. The beneficiary does not mention the consulting position in her detailed resume, and no dates have been provided for her period of employment. Given the lack of information in the record, the AAO finds [REDACTED] letter alone to be insufficient to establish that the beneficiary's unspecified period of employment as a consultant rises to the level of employment in a critical or essential capacity.

Based on the foregoing discussion, the petitioner has not submitted evidence that satisfies the plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

8. *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.*

The petitioner has offered the beneficiary an annual salary of \$60,000. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field and does not claim that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

B. Final Merits Determination

Kazarian sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. However, as discussed above, the petitioner established eligibility for only two of the criteria, of which three are required under the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved a level of expertise indicating that she is one of that small percentage who have risen to the very top of the field of endeavor pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary has sustained national or international acclaim and that her achievements have been recognized in the field of expertise, pursuant to 8 C.F.R. § 214.2(o)(3)(iii). See *Kazarian*, 2010 WL 725317 at *3.

In this case, we concur with the director's finding that the petitioner has not established that the beneficiary has "extraordinary ability" in the social sciences or education, which has been demonstrated by sustained national or international acclaim, and whose achievements have been recognized in the field through extensive documentation. Section 101(a)(15)(O)(i) of the Act. The petitioner has not demonstrated that the beneficiary received a major internationally recognized award or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii).

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner submitted documentation relating to the beneficiary's achievements. Although the petitioner's evidence meets two of the eight criteria, the submitted evidence is not indicative of the beneficiary's national or international acclaim and there is no indication that her individual achievements have been so recognized in the field or that she meets the overall criteria for eligibility at the time her petition was filed.

With regard to the evidence submitted for 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), the evidence submitted has met the plain language of the regulation. The beneficiary's published works to date include the completion of her dissertation, and publication of two articles and one book chapter. There is no evidence that any other researchers have cited to her work as of the date the petition was filed. The petitioner has not established that this small body of published work demonstrates a level of expertise and recognition indicating that she is among that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 214.2(o)(3)(ii).

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater academic community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. If a given article attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary herself has cited sources in her own publications. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. The petitioner has not provided evidence of any citations to the beneficiary's articles, book chapter, or dissertation.

The AAO acknowledges counsel's assertion that the beneficiary's field is quite small, thus rendering the numbers of citations irrelevant. The AAO finds this assertion misleading at best, given other assertions in the record that the beneficiary's work marks a major contribution to the fields of cultural geography, Mongolian studies, Central Asian studies, property law and land privatization, political science, environmental policy, urbanization, development, and even the social sciences in general. The petitioner cannot persuasively claim that the beneficiary's work has far-reaching influence in the social sciences, while simultaneously suggesting that no other scholars have cited to her published work because her research is so narrowly focused on a sub-field that includes few researchers.

While a number of experts in geography, law, cultural studies, political science, Central Asian studies and other fields have attested to the value of the beneficiary's research and findings, such testimonials are not tantamount to citations to the beneficiary's published works. When viewed as a whole, the claim that the beneficiary's current published body of work has garnered notice in the field is not persuasive. None of the experts who provided recommendation letters have stated how or whether the beneficiary's published works have influenced their own research activities, or attested to the level of interest in the beneficiary's published

work in the field in general. Each expert offers glowing praise of the beneficiary's dissertation but speaks only of its potential impact within his or her respective area of specialization.

Finally, the AAO emphasizes that it is expected that researchers publish the results of their research in peer-reviewed journals or other publications. Publication of two such articles and one book chapter does not constitute extensive documentation of sustained acclaim through publication of scholarly articles.

With respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the beneficiary has served as a periodic peer reviewer for *The Mongolian Journal of International Affairs* and discussant at a single international conference of the Central Eurasian Studies Society. The AAO cannot conclude that these appointments establish the beneficiary's sustained national or international acclaim.

First, the AAO notes that peer review of manuscripts or articles is a routine element of the process by which articles are selected for publication in scholarly journals. Normally, an editorial board will enlist the assistance of numerous professionals in the field who agree to review a submitted paper. It is common to ask several reviewers to review a manuscript and to offer comments. Reviewers' comments may be accepted or rejected. Without evidence that sets the beneficiary apart from others in her field, such as evidence that she has peer reviewed an unusually large number of manuscripts for publication or presentation, received multiple independent requests for her services from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's role as a periodic peer reviewer for the *Mongolian Journal of International Affairs* is indicative of her sustained international recognition and acclaim in the field.

Similarly, the beneficiary's participation as a discussant at a single conference in her area of expertise is not indicative of sustained national or international acclaim in the field. While it may be true that the role of discussant is not assigned to "junior scholars," there is no evidence to suggest that such roles are typically assigned to persons who have reached the top of their respective academic fields. The beneficiary's judgment of the papers and presentations of three junior scholars at one Central Eurasian Studies Society conference is likewise insufficient to establish the requisite sustained national or international acclaim.

As discussed above, the petitioner has not established that the beneficiary's employment as a post-doctoral research fellow satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The AAO cannot conclude that appointment to a post-doctoral fellowship, even within a university and program with as distinguished a reputation as the petitioner's, is an academic role reserved for professionals who are at the very top of their field. The AAO acknowledges that the petitioner's rationale for seeking to employ the beneficiary is readily apparent. However, unlike recruiting and hiring decisions, eligibility for this visa classification is not based on a beneficiary's having specific professional competencies, however superb, unusual or in-demand they may be, but rather hinges on the beneficiary's sustained national or international acclaim and recognition in the actual field. The context is much broader than an evaluation for suitability for a particular position.

Notwithstanding the numerous opinions in the record, the fact remains that the evidence consists almost entirely of testimonial evidence. In order to establish eligibility for extraordinary ability classification, the statute requires evidence of the alien's "sustained national or international acclaim" and evidence that the alien's

achievements have been recognized in the field of endeavor through "extensive documentation." Section 101(a)(15)(O)(i) of the Act.

Furthermore, it must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Unusual in its specificity, section 101(a)(15)(O)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Here, many of the experts are personally acquainted with the beneficiary, and some have worked with her as colleagues or supervisors. Even when written by independent experts, letters solicited by an alien in support of a nonimmigrant petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a social science researcher who has sustained national or international acclaim.

The conclusion we reach by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary, a postdoctoral research fellow who received her Ph.D. in 2007, relies primarily on her limited publication record, her forthcoming book, and the praise of her colleagues and other experts in the field. While this may distinguish her from other postdoctoral researchers and research associates, we cannot narrow her field to others with her level of training and experience without nullifying the plain language of the statute.

On their own, the beneficiary's reference letters represent a sampling of individuals who may have risen to the "very top of the field of endeavor." [REDACTED] one of the beneficiary's references, has served as a [REDACTED] at the University of Hawaii and is the director of the [REDACTED] [REDACTED] who supports the petition, has been conducting research in the beneficiary's field for over 25 years and has served as the [REDACTED], East Europe and Central Asia at the University of Wisconsin. [REDACTED] indicates that he has published two books on homeland conceptions in Northeast and Central Asia. [REDACTED] is the managing editor of [REDACTED] and the deputy director of the Mongolian Institute of International Studies. Thus, it appears that the highest level of the beneficiary's field is substantially above the level she has attained as a student and postdoctoral research fellow.

Review of the record does not establish that the beneficiary has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act and the petition may not be approved.

III. Conclusion

Nothing in the decision of the AAO should be seen as an attempt to minimize the accomplishments of the beneficiary, particularly since they have been achieved so early in her career, or as a comment on the criteria used by the University of Arizona to select persons for positions. Indeed, as many of the testimonial letters make clear, the beneficiary shows great promise and potential in the field of education. The AAO recognizes that the beneficiary's nonimmigrant status as a J-1 exchange alien effectively restricts her options to petitioning for the O-1 classification, despite the fact that she has not risen to the very top of her profession.

Unlike other nonimmigrant visa classifications that are available to students and professionals, the J-1 exchange visitor visa requires the alien to leave the United States for a minimum of two years upon expiration of the visa. Originating in 1948 with the United States Information and Educational Exchange Act, Pub. L. 80-402, the long-standing goal of the exchange visitor visa has been to promote an understanding of American culture and policies abroad. *See* S. Rep. No. 80-573, at 1 (1947); *see also* Naomi Schorr & Stephen Yale-Loehr, "The Odyssey of the J-2: Forty-Three Years of Trying Not to Go Home Again," 18 GEO. IMMIGR. L.J. 221, 224 (2004). This objective was affirmed by the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256, which remains the basis of the J-1 visa program to this day.

As enacted, section 212(e) of the Act bars an alien in J-1 nonimmigrant status from applying for an immigrant visa, permanent residence, or nonimmigrant H or L status, until the alien has resided in his or her country of nationality for at least two years after leaving the United States. In addition, section 248(a)(3) of the Act bars exchange visitor aliens from changing nonimmigrant classification to anything other than A or G diplomatic visa status. *See also* *Matter of Kim*, 13 I&N Dec. 316 (Reg. Comm. 1968). Section 212(e) concludes by providing for a discretionary waiver of the two-year foreign residence requirement if, among other grounds, the departure from the United States would impose exceptional hardship upon the alien's U.S. citizen spouse or child.

There is no evidence that the beneficiary in this matter has received a waiver of the two-year foreign residence requirement. Accordingly, it appears that her one option for remaining employed in the United States upon completion of her post-doctoral research was to file an O-1 extraordinary ability visa petition, with notification sent to her home consulate abroad so that she may obtain a visa and be admitted without fulfilling the foreign residence requirement. *See generally*, Letter from Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch, Office of Adjudications, Immigration and Naturalization Service, reported in 71 No. 39 INTERREL 1360 (October 7, 1994).

The AAO notes that but for the statutory prohibition, the H-1B nonimmigrant visa classification would normally cover professors and scholars as a specialty occupation and allow the petitioner to employ the beneficiary on a temporary basis. *See* § 214(i)(1) of the Act (listing education and social sciences, among other specialty occupation professions).

This denial does not preclude the petitioner from filing a new immigrant or nonimmigrant visa petition, supported by the required evidence, after the beneficiary obtains a waiver of the two-year foreign residence

requirement. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The decision of the director is affirmed. The petition is denied.