



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 11 2015** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

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 Acting Director, Vermont Service Center, denied the nonimmigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner 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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of science. The petitioner states that it is involved in technology research and development. It seeks to employ the beneficiary as an engineer for a period of two years.

After issuing a request for evidence (RFE) and then considering the evidence of record, the acting director denied the petition. The acting director determined that the petitioner did not 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 his field of endeavor. Specifically, the acting director determined that the evidence submitted did not satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner subsequently filed a combined motion to reopen/reconsider. The acting director granted the petitioner’s motion to reopen, but denied the petition. The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner requests approval of the petition and submits a brief and additional evidence.

I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to 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, whose achievements have been recognized in the field through extensive documentation, and who 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. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). 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.”

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary’s sustained acclaim and the recognition of the beneficiary’s achievements in the field through evidence of a major internationally recognized award. 8 C.F.R. § 214.2(o)(3)(iii)(A). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that satisfies at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that certain criteria in paragraph (o)(3)(iii)(B) 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. 8 C.F.R. § 214.2(o)(3)(iii)(C).

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have

held that, “truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. Discussion

A. Extraordinary Ability in Science

The record shows that the beneficiary has been involved in the development of high performance wireless surveillance technology and electric supply and storage technology, both with applications in vehicle markets. The petitioner indicates that it has already used the beneficiary’s technology in its products, and requires the beneficiary’s services to further implement and develop his technology. On the petition, the petitioner lists an establishment date in [REDACTED] no gross or net assets, and one employee.¹

On June 7, 2013, the petitioner filed the Form I-129, Petition for a Nonimmigrant Worker. The petitioner did not submit any initial evidence in support of the petition, nor did the petitioner reference the regulatory requirements for the visa classification or otherwise indicate which criteria the beneficiary satisfies based on the submitted evidence. On June 26, 2013, the acting director issued a request for additional evidence (RFE), advising the petitioner that the initial evidence did not satisfy the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii). The acting director instructed the petitioner to submit evidence demonstrating that the beneficiary has satisfied at least three of the eight criteria provided at 8 C.F.R. § 214.2(o)(3)(iii)(B). In response to the RFE, the petitioner clarified that the beneficiary satisfies the eligibility criteria at 8 C.F.R. § 214.2(o)(1)(iii)(B)(5) and (7). The petitioner also asserted that the submitted evidence should be considered as “comparable evidence” under 8 C.F.R. § 214.2(o)(1)(iii)(C).

The acting director denied the petition on October 3, 2013, concluding that the petitioner did not establish that the beneficiary has satisfied at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). On motion, the petitioner asserted that the beneficiary additionally satisfies the eligibility criterion at 8 C.F.R. § 214.2(o)(1)(iii)(B)(3). For the reasons discussed below, the petitioner has not established that the beneficiary is one of the small percentage who has risen to the very top of his field of endeavor.

1. Consideration of the Evidentiary Criteria²

The sole issue is whether the petitioner submitted evidence to establish that the beneficiary enjoys the requisite sustained national or international acclaim. If the petitioner establishes through the

¹ According to publicly available information on Florida State’s website, [REDACTED] accessed February 26, 2015 and incorporated into the record of proceeding, the beneficiary is one of the petitioner’s directors.

² The petitioner does not claim to satisfy or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

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 have submitted the requisite initial evidence pertaining to the beneficiary's acclaim and recognition. The regulations cite to the Nobel Prize as an example of a major award. *Id.* Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award, nor has the petitioner asserted that the beneficiary satisfies this criterion. 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).

After careful review of the record and for the reasons discussed herein, the petitioner not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B) or under the "comparable evidence" provision at 8 C.F.R. § 214.2(o)(1)(iii)(C).

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

In support of the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), the petitioner submitted several published articles and President Barak Obama's 2013 Climate Action Plan concerning the importance of accelerating renewable energy generation and advancing storage technologies. The petitioner also submitted several articles about the important role video surveillance systems play in the security and efficiency of ground transportation systems and with federal and local law enforcement. On appeal, the petitioner describes that material as "additional evidence highlighting the importance and growing impact of technology in the fields for which [the] [b]eneficiary has designed his patents and devices." However, as noted by the acting director, that published material does not mention the beneficiary by name. Therefore, the acting director determined that the submitted evidence did not satisfy this criterion.

Although not mentioned by the acting director, on motion, the petitioner did submit an [REDACTED] article about the beneficiary's work with the petitioner, published in the Brazilian newspaper [REDACTED] entitled "[REDACTED]" The plain language of the regulation requires that the published material shall include the title, date, and author of the material, however, the article is a press release that does not include the author of the material. In addition, there is no showing that [REDACTED] is a "major" trade publication or some other form of "major" media, as required by the plain language of the regulation. Further, this evidence is not relevant to the issue of the beneficiary's eligibility for the benefit sought at the time of filing, because the article was published after June 7, 2013, the date of filing the petition. *See* 8 C.F.R. § 103.2(b)(12). 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, 249 (Reg'l Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

For the above reasons, the beneficiary does not satisfy this criterion.

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

In response to the RFE, the petitioner submitted an undated letter summarizing the beneficiary's proposed employment. The petitioner stated that it is involved in the development and production of "high-technology equipment in the area of renewable, sustainable and clean energy," particularly in the area of "solar power technology and improvement." The petitioner states that it has implemented the beneficiary's patented electric supply and storage system, called "[REDACTED]" in the design of its "[REDACTED]" series of products, which the petitioner describes as its "core product offerings." The petitioner indicates that the beneficiary's "[REDACTED]" technology improves by 50% the rate of energy retention and output compared to current technology in the field, and "can be designed or modified to work with any size and utility of hardware or host device."

The petitioner submitted a copy of two Brazilian Patent applications, each listing the beneficiary as the inventor, as follows: 1) Number [REDACTED] and 2) Number [REDACTED]

The petitioner also submitted an inspection report dated September 5, 2013, obtained from the [REDACTED] certifying that the beneficiary's [REDACTED] technology "did increase the recharge capability of the [petitioner's [REDACTED]] solar power generation system." The report concluded that "the amount increase [in voltages after solar charging] from the charge controller to [the beneficiary's] patented technology totals 1200%."

In addition, counsel asserted as follows:

[T]he petitioner has demonstrated the [beneficiary's] surveillance technology to local law enforcement agencies, such as the [REDACTED] Police Department, [REDACTED] Florida, and the police department is testing the camera's utility and clarity as a dashboard camera because of its high resolution and rapid download capabilities with plans to implement the technology in its entire vehicle fleet.

However, the record does not contain sufficient documentary evidence in support of this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The only evidence supporting counsel's assertion is a letter from Ms. [REDACTED] a lawyer who has worked with the beneficiary and the petitioner. Ms. [REDACTED] discusses the beneficiary's patented technologies, and praises the beneficiary's skills, "not just as a patent developer, but as a commercially viable patent developer." She asserts that the beneficiary's video surveillance technology has been shown to be "implicitly viable in the United States through the intense interest of local law enforcement" in [REDACTED] Ms. [REDACTED] does not state the basis

for her knowledge of law enforcement's interest in the beneficiary's work and the record does not contain confirmation from officials in [REDACTED]

Ms. [REDACTED] also states that the beneficiary's [REDACTED] technology "is anticipated to be highly commercially viable in light of its significant improvements over standard offerings in the field." However, Ms. [REDACTED] who is not a recognized expert in the field of engineering, does not state the basis for her knowledge of "standard offerings" in the field of engineering.

The petitioner further submitted several recommendation letters in support of the petition. The petitioner submitted a letter dated December 10, 2012, from a representative of the Brazilian transportation company [REDACTED], stating that [REDACTED] has used the beneficiary's wireless surveillance technology "[REDACTED]" in "200 buses at our fleet . . . on our daily operations with great success." While notable, an example of a single transportation company utilizing the beneficiary's work is not evidence of a contribution of major significance to the field as a whole.

United States Representative [REDACTED] provided a letter dated October 31, 2013, describing the beneficiary's patented solar technology as having "significantly promising potential to be one of those novel technologies that can address many of the interests of the solar technology field" having had "astounding results in preliminary testing that showed the technology's unparalleled solar power absorption and retention."

Mr. [REDACTED] of [REDACTED] states that he has "witnessed personally [the beneficiary's] technology at work and [has] also introduced it to some very knowledgeable experts in the solar industry." Mr. [REDACTED] does not state how he first became aware of the beneficiary's work. He describes the beneficiary's technology as being "poised to be a breakthrough in solar powered efficiency and performance and could be beneficial to multiple energy platforms," and as having "great merit with breakthrough game changing attributes with far reaching benefits."

Mr. [REDACTED] the president of the [REDACTED] and [REDACTED] has submitted two letters, dated October 29, 2013, and April 30, 2014, respectively. In his letters, Mr. [REDACTED] states that he has reviewed the beneficiary's technology, and finds it "profoundly novel in its ability to increase solar power absorption and retention by 1200% over the industry standard." Mr. [REDACTED] does not state how he first became aware of the beneficiary's work. He describes the beneficiary's contributions to the field of solar power as "unprecedented and unrivaled, due to its novelty." In both letters, Mr. [REDACTED] further explains:

If such technology were implemented widely, not only would the integration of solar power into the electric grid be significantly improved, but such uses would [be] directly supportive of the United States' ambition in leading as the alternate energy innovator.

The acting director acknowledged the evidence of the beneficiary's patents, but noted that the record contained no evidence other than the petitioner's statements to establish that the patents represent a scientific contribution of major significance in the field, as required by 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). Patents, while indicative of originality, do not demonstrate the impact of the innovations.

On appeal, the petitioner once again references the beneficiary's Brazilian patents, and asserts that it has submitted evidence related to the major significance the beneficiary's patent applications have made and will make in the future. The petitioner emphasizes that "the [b]eneficiary's solar technology has the potential ability to address many of the concerns and goals articulated by President Barack Obama in his Climate Action Plan related to sustainable energy and responses to climate change." While President Obama's statements in his Climate Action Plan and the plan's recommendations regarding solar power are noted, they are not an indication that the beneficiary himself has achieved national or international recognition for a scientific contribution of major significance. Rather, they reflect that the scientific community at large is encouraged to develop clean energy technologies, including solar power, for everyday use.

The petitioner submits a letter dated May 2, 2014, from Mr. [REDACTED], Public Works Director of the [REDACTED], Florida, stating that on April 26, 2014, the city used the petitioner's "prototype" solar powered generator containing the beneficiary's patented technology at a community festival, and that the generator, "was more than able to supply all of the power needs for several music events through-out [sic] that afternoon." The petitioner also submits a press release dated March 26, 2014, from the website of [REDACTED], verifying that company's recent agreement with the petitioner to be "the Master Distributor of the [b]eneficiary's proprietary solar charging system in the Florida Market." The petitioner further submits a shareholder agreement dated January 10, 2014, between the petitioner and [REDACTED] which the petitioner characterizes as "an investment agreement . . . in which the two companies will become partial shareholders of the other in a mutually beneficial relationship to continue to design, develop and distribute products using the [b]eneficiary's novel and significant solar technology." The petitioner explains that it is because the beneficiary's innovations in solar technology are "just emerging out of prototype mode that [the] [p]etitioner and [the] [b]eneficiary are just beginning to establish relationships and contracts for use and introduction of the technology into the current market." The petitioner also asserts that "because the technology is so advanced and highly proprietary, [the] [p]etitioner and [the] [b]eneficiary must use extreme caution and operate with high levels of confidentiality or risk the possibility that others will copy, steal or manipulate [the] [b]eneficiary's intellectual property."

Upon review, the events which are the subject of this documentation postdate the filing of the petition and, thus, are not evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. section 103.2(b)(1),(12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Katigbak*, 14 I&N Dec. at 49. Additionally, while intellectual property protections are a valid concern, without evidence that the beneficiary's innovations have garnered attention in the field or set a new recognized benchmark in the field, we cannot conclude that the beneficiary's work is a recognized contribution to the field as a whole. 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)). Thus, the impact of the innovations is not documented in the record.

While the record establishes that the beneficiary's research is of value to the petitioning company, the record does not establish that the beneficiary's work has represented a groundbreaking advance in his field. The burden is on the petitioner to establish the significance of the beneficiary's work. To satisfy the criterion relating to original contributions of major significance, the petitioner must

not only demonstrate that the beneficiary's work is novel and useful, but also that it has had a demonstrable impact on his field. While the petitioner has established its interest in the beneficiary's work on solar technology and wireless surveillance technology, it remains that the record does not contain independent evidence discussing the beneficiary's work and the significance of his contribution other than the [REDACTED] report. While the [REDACTED] report confirms that the technology works as specified, the report does not evaluate the impact the technology has already had on the field. Not every alien who authors a patent application is eligible for O-1 classification, and not every patent application may be deemed to be a contribution of major significance. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* To satisfy this criterion, the petitioner must document recognition received by the beneficiary for his contribution beyond the patent applications, a report confirming that the technology works, and the petitioner's own statements.

The level at which the beneficiary's contributions have impacted his field as a whole is the determining factor as to whether the contributions are of major significance. Speculation as to a future contribution does not establish that the beneficiary has already contributed to the field as a whole. While the writers of the above recommendation letters attest to the beneficiary's innovations and credit him with "profoundly novel," "astounding," "unparalleled" and "breakthrough" work, none of the letters provides specific details to establish how the beneficiary is considered to have made a contribution of major significance to his field. The beneficiary's contributions consist of his two patent applications and work performed for the petitioner and for [REDACTED]. The petitioner has not established that the benefits to it and to [REDACTED] have already spread sufficiently to have a broad impact within the industry as a whole commensurate with a contribution of major significance.

Based on the above, we conclude that the beneficiary does not satisfy this criterion.

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

The seventh criterion requires the petitioner to submit evidence that the alien has been employed in a critical or essential capacity for organizations that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The acting director determined that the petitioner has not established that the beneficiary was employed in a critical or essential capacity for organizations that have a distinguished reputation.

The petitioner has submitted a resume for the beneficiary which lists his employment history and includes the names of his employers and brief descriptions of the duties he performed for each employer, as the founder/president of an information technology/patent development company and as a technology consultant for another company bearing the beneficiary's name, from 1993 until the date of filing the petition.

First, the petitioner has not demonstrated that the beneficiary has already been "employed" in a qualifying capacity for either the petitioner or [REDACTED]. While the beneficiary's work included the

development of wireless surveillance technology, the evidence of record does not contain any specific reference to the beneficiary's employment capacity with the petitioning organization. The petitioner indicates that it has employed the beneficiary in a critical or essential capacity. In support of its assertion, Mr. [REDACTED] asserts that the beneficiary is critical to the success of the petitioning company because the beneficiary's patented electric supply and storage system underpins the petitioning company's core product offerings. However, Mr. [REDACTED] makes no specific reference to the beneficiary's employment capacity with the organization.³ The petitioner indicates at Part 5 of the petition that it presently has one employee and responds "N/A" to questions requesting its gross and net annual income. While the beneficiary's services appear to be critical to the petitioning company based on his patented electric supply and storage system, the evidence of record does not establish that the petitioner has employed the beneficiary.

The evidence of record also does not contain any specific reference to the beneficiary's employment capacity with [REDACTED]. As previously noted, a representative of [REDACTED] confirmed only that the company bought the beneficiary's surveillance technology and uses it in its fleet of 200 buses. Without additional information and evidence regarding the beneficiary's role if any, at [REDACTED], the evidence does not establish that the beneficiary has been employed by [REDACTED] in a critical or essential capacity.

Second, the petitioner has not provided any background information or documentation regarding the petitioning company or [REDACTED] to establish that either company is an organization with a distinguished reputation. Notably, as stated above, the petitioner's founders established the petitioner in [REDACTED] the same year it filed the petition, and the petitioner lists one employee and no gross or net income on the petition. While this information does not preclude a finding that the petitioner enjoys a distinguished reputation, the petitioner has not established that it garnered a distinguished reputation within the short time of its existence prior to filing the petition. As such, the evidence of record is insufficient to establish that the beneficiary has been employed in a critical or essential capacity for organizations with a distinguished reputation. Again, 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. at 165. Accordingly, the beneficiary has not been shown to satisfy this criterion.

Comparable Evidence under 8 C.F.R. 214.2(o)(3)(iii)(C)

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides that if the petitioner demonstrates that certain criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

In response to the RFE, the petitioner stated that the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) are not readily applicable to the beneficiary's occupation as follows:

Due to the beneficiary's unique niche [sic] in the scientific world as a commercial patent developer, evidence of scholarly articles or panels is not applicable to his extraordinary skills as he is not an academic researcher. Rather, comparable evidence of his outstanding abilities is

³ USCIS records indicate that since 2006, the beneficiary has filed multiple B-1/B-2 classification petitions which were approved, the most recent of which was valid until June 8, 2013.

based on the commercial viability of his patent work. The beneficiary has already developed two distinct technologies that have received international patents, and have resulted in worldwide commercial viability with current interest from United States law enforcement in obtaining the beneficiary's technology.

The acting director's decision did not address whether the evidence establishes the beneficiary's eligibility under the "comparable evidence" provision at 8 C.F.R. § 214.2(o)(1)(iii)(C).

Section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof on the party seeking benefits. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8).

The petitioner's unsupported assertion that the scholarly articles criterion at 8 C.F.R. § 214.2(o)(3)(iii)(6) is not readily applicable to the beneficiary's occupation is not sufficient. While it is understandable that an inventor would not publish certain proprietary discoveries, the petitioner has not established that engineers, the beneficiary's occupation, do not publish in the field at all such that the criterion is not readily applicable to the beneficiary's occupation. Moreover, the patent applications are direct evidence relating to contributions. Innovations that do not rise to the level of contributions of major significance at the time of filing need not be considered in the alternative as comparable evidence of scholarly articles. Finally, even if we looked at commercial viability, which is related to but not comparable with contributions of major significance, the petitioner has not submitted evidence from a law enforcement agency confirming their interest in the beneficiary's work.

Whether one relies on the standard regulatory criteria or on comparable evidence, the burden is still on the petitioner to show that the beneficiary "is one of the small percentage who have arisen to the very top of the field of endeavor" as required by 8 C.F.R. § 214.2(o)(3)(ii) and has earned "sustained national or international acclaim" as required by section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). None of the available documentary evidence submitted, including the patent applications or witness letters, suggests that the beneficiary is an individual with sustained national or international acclaim in the field in which he would work in the United States. The petitioner has not provided any unsolicited materials reflecting his acclaim or recognition in science.

There is no evidence showing that the documentation for which the petitioner requests reevaluation as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of the field of engineering. The beneficiary's contributions to the petitioning company and [REDACTED] may indeed be considered to be of value, but there is no evidence that he has been recognized for such contributions beyond those organizations, such that his accomplishments have earned him national or international acclaim.

III. Conclusion

The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not satisfy three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner also

did not establish that those criteria did not readily apply to the beneficiary's occupation and provide comparable evidence in lieu of the specified criteria. The evidence shows that the beneficiary is a skilled and experienced engineer. Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability as an engineer, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). While we have considered the recommendations submitted, the petitioner has not established that the beneficiary's achievements have already risen to this level. The petitioner has not presented the type of sustained national or international recognition of accomplishments necessary for O-1 classification. Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act. For this reason, the petition may not be approved.

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

ORDER: The appeal is dismissed.