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

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: JUN 14 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

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 $630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on December 23, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability, failed to submit extensive documentation of his sustained national or international acclaim, and failed to establish his intention to continue to work in the United States in his area of expertise.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the 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 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria[2]

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel claims that the petitioner established eligibility for this criterion based on the petitioner's receipt of a bronze at the 2009 CLIO Awards and 2009 One Show Interactive Award from The One Club. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

Regarding the [redacted], the petitioner submitted a letter from [redacted], who stated that "CLIO remains the largest and most well-known advertising awards program in the world." Moreover, the petitioner submitted screenshots from [redacted] and an entry form for the [redacted]s. However, the petitioner failed to submit independent, objective evidence reflecting that the [redacted] are nationally or internationally recognized for excellence in the field. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions or promotional material). The petitioner also submitted screenshots from *Wikipedia* regarding the CLIO Awards. However, as there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign weight to information from *Wikipedia*. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).[3] While

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[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

[3] *See* also the online content from http://en.wikipedia.org/wiki/Wikipedia:_General_disclaimer, accessed on June 5, 2012, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or

the petitioner demonstrated his receipt of a bronze at the [redacted] he failed to establish that the CLIO Awards are nationally or internationally recognized for excellence in the field of endeavor.

Similarly, regarding the petitioner's [redacted], the petitioner submitted a letter from [redacted] who stated that "[redacted] is the premier association of advertising creative [sic] and students of the industry." While [redacted] provided some background information about [redacted] she failed to indicate if the [redacted] is nationally or internationally recognized prize or award for excellence. Moreover, while the petitioner submitted screenshots from http://oneshowinteractive.org and *Wikipedia*, he failed to submit any independent, objective evidence reflecting that the [redacted] is nationally or internationally recognized for excellence in the field. *See Braga v. Poulos*, No. CV 06 5105 SJO *aff'd* 2009 WL 604888 (concluding that the AAO did not have to rely on self-serving assertions or promotional material); *see Laamilem Badasa v. Michael Mukasey*, 540 F.3d at 909 (concluding that there are no assurances about the reliability of open, user-edited Internet sites).

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's prizes or awards be *nationally or internationally recognized* for excellence in his field. In this case, the petitioner failed to demonstrate that his awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

The director determined that the petitioner failed to establish eligibility for this criterion. In counsel's brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner failed to establish that he meets this criterion.

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

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altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

In the director's decision, he determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Based on a review of the record of proceeding, the petitioner demonstrated that he minimally meets the plain language of the regulation for this criterion.

Accordingly, the petitioner established that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

On appeal, counsel claims:

> Concerning evidence submitted to satisfy this criteria [sic], the Petitioner simply does not understand why the Center Director should have concluded with a single sentence as follows:
>
> "[The petitioner] did not provide any evidence regarding this criterion, so the criterion has not been met."
>
> This is entirely incorrect. The fact is that the Petitioner submitted six articles he authored from May 2007 to October 2007 in a series of lectures explaining in detail about every aspect of Adobe Flash Lite technology. These six articles are published in the *W.E.B.* magazine. . . . It is therefore hard to understand why the Center Director should have dismissed these documents with a single sentence as being nonexistent.

A review of the record of proceeding fails to reflect that the petitioner claimed eligibility for this criterion at the time of the original filing of the petition or in response to the director's notice of intent to deny pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). Therefore, the AAO finds no error in the findings of the director for this criterion and is not persuaded by counsel's claims. It is noted that counsel originally claimed the petitioner's eligibility for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) based on the six aforementioned self-authored articles rather than for this criterion.

Notwithstanding the above, the AAO will review the documentary evidence to determine if the petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) that requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The petitioner submitted documentary evidence reflecting that he authored six informative articles regarding Adobe Flash Lite for W.E.B. However, a review of the material fails to reflect the petitioner's authorship of "*scholarly* articles [emphasis added]." In general, scholarly articles are generally written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. However, the articles fail to reflect that they were peer-reviewed, contained any references to sources, or are otherwise

considered "scholarly." As the regulation at 8 C.F.R. § 204.5(h)(3)(vi) specifically requires the articles to be scholarly, the submission of non-scholarly articles is insufficient to meet the plain language of this regulatory criterion.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that he meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the authorship of scholarly articles in more than one publication. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). In the case here, the petitioner submitted documentary evidence reflecting that his articles were published in only one publication – *W.E.B.*

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The documentary evidence submitted by the petitioner fails to reflect that the petitioner has authored scholarly articles in his field in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel claims the petitioner's eligibility for this criterion based on his role with [redacted] Counsel further claims that the petitioner's [redacted] discussed under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) and recommendation letters that were submitted for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) demonstrate eligibility for this criterion. The AAO will not presume that evidence relating to or even meeting the awards criterion and original contributions criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

On appeal, counsel refers to letters from [redacted] stated:

> [The petitioner] has worked at our company on several important projects that required a Flashlite mobile designer and developer who is at the absolute top of their profession. His work was of the highest quality and he exhibited a solid understanding of Adobe Flashlite development and design. His creative contributions played an instrumental role in the success of the projects to which he was assigned. [The petitioner] has created [redacted] client and has worked on [redacted].

Moreover, [redacted] stated:

> [The petitioner] is a remarkably talented artist/programmer who has executed design/programming concepts for several of our most prestigious [redacted]. [The petitioner] played an important role on my team as our [redacted] designer – a skill-set that not many programmers in the USA have. His contributions greatly impressed both our internal teams and the [redacted], which lead to additional work for [redacted]. His work complimented our ideas and brought these ideas to life in the mobile space. We were extremely impressed with his craftsmanship and quality of work. [The petitioner] has been an invaluable asset to the success of our projects and we were thrilled with the results of our collaboration with him.

Although the letters indicated that the petitioner was "instrumental" and "important" to [redacted] they fail to reflect that the petitioner has performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Vague, solicited letters that do not specifically identify the petitioner's roles or provide specific, detailed examples of how his role was leading or critical are insufficient. It appears from their job titles that these individuals who wrote recommendation letters on behalf of the petitioner performed in a far more leading or critical role. The petitioner failed to submit any organizational charts, for example, to demonstrate that the petitioner's roles were leading or critical when compared to other employees at the organization. Neither [redacted] described the petitioner's role to the roles of the other employees of the "internal teams," so as to reflect that the petitioner's role was leading or critical.

The letters considered above primarily contain bare assertions of the petitioner's role at [redacted] without specifically identifying the roles and explaining how they were leading or critical. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.

See Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the petitioner's role at RG/A.

Regarding the references to the petitioner's talents, merely having a diverse skill set is not reflective of performing in a leading or critical role. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to perform in a leading or critical role. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

Even if the petitioner established that he performed a leading or critical role at R/GA, which he clearly did not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner's leading or critical be for more than one organization or establishment. In the case here, the petitioner only claimed eligibility for this criterion based on his role with R/GA.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

Accordingly, the petitioner failed to establish that he meets this criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

III. INTENT TO CONTINUE TO WORK IN THE UNITED STATES

The regulation at 8 C.F.R. § 204.5(h)(5) states:

> Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

In the director's decision, he determined:

> [Y]ou have not established you are coming to the United States to work as a User Interface Designer. Although, no offer of employment is required for this classification, it must be established that you are coming to the United States to continue work in your [field] of expertise. C.F.R. Section 204(h)(5). There are no contracts or job offer evidence in the record to demonstrate you will continue to work in your field of endeavor.

In counsel's brief on appeal, counsel claims that "[i]t is also noted that the Center Director has not disputed evidence that the [petitioner] seeks to enter the United States to continue to work in the area of his extraordinary ability . . . ." On the contrary, as evidenced by the director's decision indicated above, the director specifically determined that the petitioner failed to establish that he intended to come to the United States to work in his field of expertise.

The AAO concurs with the director regarding this issue. The record contains no evidence of letters from prospective employers, contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. As such, the petitioner failed to establish by clear evidence that he intends to come to the United States to continue in his area of expertise pursuant to section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(h)(5).

IV. O-1 NONIMMIGRANT

The AAO notes that the petitioner indicated on his petition that he was last admitted to the United States on February 23, 2010, on an O-1 nonimmigrant visa. However, while USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the

contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

V. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.

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[4] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).