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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

**PUBLIC COPY**

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DATE: **MAR 27 2012**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:  
Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” as a model, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective 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 submits a brief with no new documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

## 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.<sup>1</sup> 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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<sup>1</sup> 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<sup>2</sup>

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to the event. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provides a letter from [REDACTED] verifying that his organization awarded the Look of the Year Beauty Contest to the petitioner in 1994. The director determined that the petitioner failed to satisfy the requirements of this criterion.

Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The record does not contain the 1994 Look of the Year Beauty Contest award. In this case, while the petitioner submitted a verification letter, she failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, the verification letter that the petitioner provides is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths who has, having confirmed the declarant's identity, administered the requisite oath. *See Black's Law Dictionary* 62 (8th ed. 2004). Nor, in lieu of having been signed before an officer authorized to administer oaths, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. As such, this evidence fails to meet the regulatory requirements for primary evidence and may not be considered as a form of qualifying evidence under this particular criterion.

Notwithstanding the above shortcoming, the evidence relating to the 1994 Look of the Year Beauty Contest award, which includes what appears to be a foreign language news article, contains an

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

additional shortcoming. While not addressed by the director in his decision, the AAO notes that although record contains a single certification of translation, it is unclear which translations, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of “awards” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the 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 \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of 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.*

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner’s work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item’s title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides numerous print advertisements in which she appears, magazine articles in which she models a product featured in the article, and other various photographs. The director determined that the petitioner failed to meet the requirements of this criterion.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) plainly states: “Such evidence *shall* include the title, date, and author of the material, and any necessary translation.” (Emphasis added.) The submitted evidence lacks all of the elements required by the last sentence of this criterion as these are not the type of titled, authored published material contemplated under this criterion. The plain language of the regulation requires an author, title, and date of the published material, which is present in written published works. The petitioner fails to provide documentary evidence of these required elements thereby disqualifying the submitted evidence. The petitioner did not submit any articles that are about her and her work in the field in one of the requisite publication types, including the title, date, and author of the material.

Finally, the record also includes foreign language articles. The certification of translation is deficient for the reasons discussed above. In addition, one of the translations does not identify the publication, date or author. Further, the articles are about Look of the Year and not any one model.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

Counsel did not initially assert that the petitioner was submitting evidence relating to this criterion. In the director’s Notice of Intent to Deny (NOID), the director advised that the petitioner has submitted letters attesting to her ability but this evidence did not address the degree to which she has “impacted her profession.” In response, counsel asserted that the “extensive published material,” the “critical role” the petitioner has performed for organizations and agencies and participation in “countless ad campaigns” demonstrates her “major contributions to” the industry. Published material and leading or critical roles are covered under separate criteria. 8 C.F.R. §§ 204.5(h)(3)(iii), (viii). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from published material and leading or critical roles. Counsel did not explain why the ability to continuously work in her field, as evidenced by her appearance in many advertising campaigns, constitutes a contribution of major significance to or in her field. The director concluded that the petitioner had not submitted evidence relating to this criterion.

On appeal, counsel contends that the director went beyond the regulatory requirements when he indicated in the NOID that the submitted evidence lacked an indication of the degree to which the petitioner has impacted her profession. Counsel characterizes this scenario by stating, “The regulation simply requires ‘contributions of major significance *in* the field’ as opposed to ‘significance *to* the field.’” Counsel does not explain where the director stated that the petitioner must demonstrate contributions that are “significant to her field.” Regardless of the preposition, the plain language of the

regulation requires that the contributions be both “original” and of “major significance.” The AAO finds no improper application of the regulations as counsel asserts.

A petitioner may be put on notice of evidentiary requirements by various means, including a NOID. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). In response to the NOID, the petitioner, through counsel, failed to provide any additional evidence and counsel did not express any concern that the director erred in noting a lack of evidence of any impact on the field. Counsel merely requested the director consider the evidence in its entirety, including evidence relating to separate criteria.

The Department of Labor’s Occupational Outlook Handbook details the nature of modeling as follows:

Models pose for photos, paintings, or sculptures. They display clothing such as dresses, coats, underclothing, swimwear, and suits, for a variety of audiences and in various types of media. They model accessories, such as handbags, shoes, and jewelry, and promote beauty products, including fragrances and cosmetics. The most successful models, called supermodels, hold celebrity status and often use their image to sell books, calendars, fitness videos, and other products. In addition to modeling, they may appear in movies and television shows.

Models appear in printed publications, at live modeling events, and on television to advertise and promote products and services. Most modeling jobs are for printed publications, and models usually do a combination of editorial, commercial, and catalog work. Editorial print modeling uses still photographs of models for fashion magazine covers and to accompany feature articles. Commercial print modeling includes work for advertisements in magazines, newspapers, and billboards. Models advertise merchandise and appear in department-store catalogs, mail-order catalogs, and on the Internet.

*See* <http://www.bls.gov/oco/ocos337.htm#nature> (accessed on March 16, 2012 and incorporated into the record of proceeding).

The AAO must presume that the word “original” and the phrase “major significance” are not superfluous and, thus, that they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in* *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). The AAO considers the alleged “published material” and the petitioner’s roles separately under the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (viii). Counsel has not explained why appearing in advertising campaigns is either original or of major significance in her field.

In light of the above, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides several expert letters as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

[REDACTED] all industry photographers; [REDACTED] a fashion designer; [REDACTED], a celebrity hairdresser; [REDACTED] and [REDACTED] both producers; and [REDACTED], President of [REDACTED] and Company, Inc. indicate that the petitioner "has played a critical role in advertising *campaigns*" (emphasis added). These contentions fail to note how these individuals came to possess this knowledge; whether the individual has worked with the petitioner on said campaigns or if this is common knowledge within the industry. Nevertheless, that the petitioner performed in a critical role for advertising campaigns is insufficient to meet the plain language requirements of this criterion, which calls for a critical role for organizations or establishments. Further, except for the opening paragraph describing each letter-writers' qualifications, these letters are identical in their content. While the authors signed the letters, affirming their contents, the words are not their own. The letter from [REDACTED] also states that the petitioner has played a key role in advertising campaigns, rather than for the Ford Models organization.

The record contains numerous expert letters that contain either nearly identical text or small variations while still conveying the same information as other letters. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988); see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Some of the letters containing indistinguishable language are from: [REDACTED], [REDACTED], and [REDACTED] all industry photographers; [REDACTED] a fashion designer; [REDACTED] a

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<sup>3</sup> <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on March 13, 2012, a copy of which is incorporated into the record of proceeding.]

celebrity hairdresser; [REDACTED] and [REDACTED], both producers; and [REDACTED].  
[REDACTED] The indistinguishable portions of these letters state:

I can attest to the extraordinary talents of the leading fashion industry model [the petitioner].

[She] is a top supermodel whose image has appeared in magazines ranging from *Vogue* to *Elle*, *Cosmopolitan*, and *Glamour*, and who has played a critical role in advertising campaigns for such brand names as Avon, Clairol, and L'Oreal. [The petitioner] has been an acclaimed high-fashion model in high demand for over fifteen years, and as such is in the top one percent of international fashion models working in the industry. It is rather rare for a model's career to last so long, and to still be in demand by leading agencies, advertisers and magazines.

[The petitioner's] success rubs off on any advertising campaign of which she is a part, and in my opinion, therefore, she is fully deserving of admission to the United States as an EB-1 artist, based on her extraordinary ability, career accomplishments and strong commercial success.

Although several other letters contain a different message, the text from each of these letters is also nearly indistinguishable, referencing her "professionalism and stamina that are the envy of her peers." The only expert letters that contain original thoughts and text are from [REDACTED] and [REDACTED], Bookings [REDACTED]

However, neither letter will assist the petitioner in meeting the plain language requirements of this criterion as the letter from [REDACTED] merely indicates that the petitioner assisted in the success of the line she was promoting and the letter from [REDACTED] indicates that the petitioner performed in a leading role in ad campaigns. Consequently, none of the expert letters demonstrate that the petitioner performed in a leading or in a critical role for organizations or establishments that have a distinguished reputation.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. As the petitioner is claiming to be among those in the top of her field, so must she demonstrate that her salary is among those in the top of

her field. The petitioner must submit documentary evidence of the earnings of those in her occupation performing similar work *at the top level of the field*.<sup>4</sup> The petitioner must present evidence of objective earnings data showing that she has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner provides a letter from [REDACTED] Models, website printouts from the Foreign Labor Certification (FLC) Data Center, various pay stubs and payroll records, and a letter from her accountant. The director determined that the petitioner failed to meet the requirements of this criterion.

Counsel’s appellate brief indicates that [REDACTED] Models confirms that the petitioner is the organization’s highest paid model. However, the regulation calls for a high salary in relation to others in the field rather than simply within one modeling agency. Within the letter from [REDACTED] Models, Ginni Conquest, [REDACTED] states that the petitioner “commands the highest rates in the field: \$3000 to \$5000 [sic] per working day and \$75,000 + per year.” The regulation requires the petitioner’s salary to be high in relation to others in the petitioner’s field. Although Ms. Conquest asserts that the petitioner is in the top one percent of talent in the modeling field, she does not indicate what the salaries of other top earners in the field are in which to compare the petitioner’s salary.

According to the website printouts from the FLC, the level 4 wage for models was \$38,210 per year in the New York – New Jersey metropolitan division, \$40,123 per year in the Los Angeles area, and \$29,910 per year in the Miami area. However, median regional wage statistics do not meet the requirements of this criterion such that the petitioner demonstrates that her salary is among those in the top of her field rather than her salary being high compared to the median or average salaries in one of named localities. The petitioner’s attempt to use average, local salary levels does not allow for an appropriate basis for comparison in determining a high salary “in relation to others in the field.” *See Matter of Price*, 20 I&N Dec. at 954.

[REDACTED] Models indicates the petitioner played a key role on several advertising campaigns and that her rate of pay “topped 15.000 DM [Deutschmark].” [REDACTED] provides an insufficient amount of information for the AAO to determine if the petitioner commanded a high salary or other significantly high remuneration for her services. The letter from the petitioner’s

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<sup>4</sup> While the AAO acknowledges that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term [extraordinary ability at] 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

accountant is signed by [REDACTED]. [REDACTED] indicates that the petitioner's 2007 gross income was \$110,507 and that his firm handles the accounts of top models. However, [REDACTED] neglected to indicate the salary level of any of these top models. As a result, the petitioner has not provided evidence in which the AAO might compare her salary in relation to others in her field.

Accordingly, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

### B. Summary

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

### III. 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.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[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.<sup>5</sup> 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.

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<sup>5</sup> 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).

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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.