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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 10 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on October 30, 2012. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on November 16, 2012. The appeal will be dismissed.

According to parts 2 and 6 of the petition, filed on September 5, 2012, the petitioner seeks classification as an alien of extraordinary ability in the sciences, specifically, as a mechanical engineer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability as a mechanical engineer.

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; 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)-(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, the petitioner files a 14-page statement and supporting documents, many of which the petitioner had previously filed. According to part 3 of the Form I-290B, Notice of Appeal or Motion, and the 14-page appellate statement, the petitioner only challenges the director's adverse finding as relating to the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of mechanical engineering, and that he has sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO will dismiss the petitioner's appeal.

I. THE 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.

United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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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 (vi).

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 case, the AAO affirms the director's finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top in the field of mechanical engineering, or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

In his October 30, 2012 decision, the director concluded that the petitioner has met this criterion. Specifically, the record contains evidence showing that the petitioner has participated in reviewing peer-reviewed manuscripts for a number of publications, including the *Journal of Applied Physics*, *Materials Science & Engineering A*, *Applied Surface Science* and *Surface and Coatings Technology*. Accordingly, the petitioner has presented evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the petitioner asserts that he meets this criterion, based on (1) his invitations to serve as a peer reviewer for a number of publications; and (2) the impact of his work as explained in reference letters and supported by the high number of his published articles, and the frequency of citations to his articles.

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[2] The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

Specifically, the petitioner asserts on appeal that his serving as a peer reviewer for "top journals" demonstrates his original contributions of major significance in the field of mechanical engineering. Specifically, the petitioner points to a September 5, 2012 letter from Editor-in-Chief of the

According to

> [The petitioner] previously reviewed papers submitted to the The Journal only selects scientists with outstanding qualifications for our review activities. Scientists are selected for review based on the high caliber of their research and their reputation in the field. [The petitioner] was chosen as a reviewer for [the] publication because [the publication] find[s] his/her research accomplishments to be extraordinary.

The letter praises the petitioner's review qualifications and research accomplishments, but fails to establish that the petitioner meets this criterion. First, the letter lacks any specific references to the petitioner's research or work. Vague letters that fail to identify specific contributions and explain their impact in the field are not probative of the petitioner's original contributions of major significance in the field.

Moreover, as discussed above, evidence relating to the petitioner's serving as a peer reviewer for the and other journals supports a finding that he meets the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Evidence directly relating to one criterion is not presumptive evidence that the petitioner meets a second criterion. Such a presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meets at least three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3).

In addition to the evidence of peer review, the petitioner has provided documents from the , showing that in 2009, grant awards were given for a research entitled and for a research entitled " " The documents further show that a number of published articles and conference proceedings, including those the petitioner authored, were produced as results of these two research studies. These documents show that the grants enabled the petitioner to conduct his research, but they do not show that the petitioner's research constitutes contributions of major significance in the field of mechanical engineering.

On appeal, relying primarily on reference/expert letters and his publication and citation record, the petitioner asserts that his research has "been implemented by scientists across the globe," has "significantly impacted the research of leading scientists across the globe," and the "originality and significance of [his] scientific contributions has been testified by worldwide scientists."

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from colleagues or associates that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).[3] The opinions of experts in the field are not without weight and will be considered below. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990).

According to an August 23, 2012 letter from a senior researcher at the in Paris, France, the petitioner is "a top-notch scientist in LSP [laser shock peening]." also stated that the petitioner's "discovery in warm laser shock peening [WLSP] brings significant impact to the community and his work has attracted widespread attention from the scientific community. Researchers from China, India and Italy have carried out follow-up studies on [the petitioner's] work." The petitioner asserts that these researchers include (1) an associate professor at the a metallurgical engineer at the and (3) a research associate at the

[3] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

The record includes an undated letter from stating that after the petitioner published his work relating to WLSP in "[b]y strictly following [the petitioner's methodology, was] able to reproduce the WLSP effects in more alloys." further stated that the petitioner's work "inspired" to write two proposals and that the petitioner's "creative work on WLSP provides the scientific background for both of the two proposals." The record contains documents relating to the two proposals. These documents, however, do not include the references on which the proposal relies or otherwise mention the petitioner by name. also stated that "[d]ue to the significance of [the petitioner's work on cryogenic laser shock peening], follow-up projects have already begun at the The two articles identifies as reporting the results of the petitioner's work in this area, however, had yet to garner any citations as of the date of filing the petition.

According to an August 22, 2012 letter from , a professor at the in China, the petitioner's research in LSP is "significant and outstanding from both theoretical and practical points of view." also provided that "[i]nspired by [the petitioner's work in WLSP], and wrote two proposals to carry out WLSP work in China." further stated that the petitioner's work in WLSP "is of major significance to the field because WLSP can significantly improve component fatigue performance while it is known that fatigue failure causes billions of dollars and sometimes human lives every year."

The record includes a September 2, 2012 letter from stating that he was "inspired" by the petitioner's research in WLSP, and "began the investigation of WLSP in [his] laboratory. Thanks to [the petitioner's] detailed work in his and papers, could easily and successfully reproduce the WLSP work in [the] laboratory." The record also includes 's 2011 article " which cited 10 references, including two articles the petitioner authored. Significantly, a review of the text of the article reveals that investigated and confirmed the petitioner's results rather than simply citing the petitioner's work as background material.

The record also includes: (1) a September 22, 2011 email from requesting a "soft copy" of the petitioner's 2010 article entitled ' (2) an online printout showing that published an article entitled in 2012; and (3) a December 2011, published article in entitled ' In this article, and his coauthors note that the petitioner's work validates one of their explanations.

According to a September 6, 2012 letter from a professor of mechanical engineering at the in Austria, the petitioner's "significant original research contributions have influenced research activities in the area of laser-assisted advanced manufacturing." Similarly,

according to a September 1, 2012 letter from , an assistant professor at the , "[t]he development of [WLSP] by [the petitioner] represents a major research contribution to the general field of Laser Peening."

Throughout the proceeding the petitioner has focused on the number of his articles and the number of citations in the aggregate as support for the assertions in the letters. Page 7 of his appellate statement provides, "two of [his] recent publications [published in 2011] received extraordinary high citations compared to other papers in the field." The petitioner also claims, "two of [his] recent papers published in 2012 are among the hottest (most downloaded) articles in and the

The record contains the following evidence relating to the petitioner's publication and citation record: (1) online printouts from ISI Web of Knowledge, entitled "Journal Summary List," and "Percentiles for Papers Published by Field, 2002 - 2012"; (2) an online printout entitled "Citation Overview Results"; (3) an online printout entitled "Most Downloaded Articles"; (4) an online printout entitled "Most Downloaded "; (5) an online printout from ResearcherID, relating to the total number of citations to the petitioner's articles; and (6) an undated document entitled "Top Percentile Calculation of the Journals out of 8281 Journals."

Authorship of scholarly articles falls under the criterion at 8 C.F.R. § 204.5(h)(3)(vi) and does not also serve to meet this criterion absent evidence that the original research reported in those articles constitutes contributions of major significance.[4] First, the importance or prestige of a publication is insufficient to demonstrate the significance, let alone major significance, of each individual article published in the publication. While the petitioner submitted evidence of publication impact factors, according to an online printout entitled "2011 Journal Citation Reports," information, such as impact factor, is used to assess "a journal's true place in the world of scholarly literature." It is not to assess the significance of any particular article published in the journal.

Second, although the petitioner has asserted that his articles have been cited by other scientists, the petitioner has not provided sufficient evidence showing that the citation frequency of either article is of such high frequency that it shows either article constitutes contributions of major significance in the field. While the director appears to have compared the petitioner's citation record with a researcher in a different field, it remains that the petitioner has not sufficiently demonstrated that his citation record is indicative of contributions of major significance in his field. Specifically, the petitioner has asserted that he has "published [an] extraordinary high number of journal papers compared to top professors and researchers in the field" and the "citation that [his] papers received is

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[4] *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

extraordinary, even compared to the most distinguished professors in top universities." According to a list entitled "[the Petitioner's] Journal Publications" and page 3 of his appellate statement, the petitioner published 18 journal papers between 2010 and July 2012, and these papers were cited over 50 times in the aggregate. Initially, the petitioner submitted an online printout entitled "Citations Received Since 1996," showing that 11 of his articles were mostly minimally cited, with two garnering a moderate number of citations between 2010 and 2012. On appeal, the petitioner submits data, purportedly from purportedly showing that a number of individuals, associated with a number of institutes, have cited the petitioner's published work between one to six times. This data is not dated, and does not specifically mention either the petitioner's name or the title of any of his published work. Ultimately, the record does not reflect that any one of the petitioner's articles has garnered more than moderate citation.

As evidence that this number of citations is significant, the petitioner submitted an online printout from the Chronicle of Higher Education entitled "Faculty Scholarly Productive Index," which shows that between 2004 and 2006, journal publications per faculty in ten universities in the United States ranged between 9.06 and 3.38, and that between 2003 and 2006, citations per faculty in the same ten universities ranged between 43.66 and 8. On appeal, the petitioner submits an online printout entitled "Citation Averages, 2000-2010, by Fields and Years," showing that for articles in the field of engineering published between 2000 and 2010, the average citation rate as of March 31, 2011 ranged from 8.22 for articles published in 2000 to 0.16 for articles published in 2010. The notes under the table explain that the lower numbers for recent years result from the smaller amount of time those articles have had to garner citations.

The "Faculty Scholarly Productive Index" relates to publication and citation data from 2003 through 2006. The publication and citation information relating to the petitioner, however, is from a different period. The petitioner has not shown that the publication and citation per faculty data from 2003 through 2006 is the same or substantially similar to the data from a period relevant to the petitioner. More significantly, the data includes faculty in all fields and is not probative regarding what level of citation is indicative of an engineering contribution of major significance.

Moreover, the "Faculty Scholarly Productive Index" relates to the average publication and citation data per faculty for each of the ten universities. The document, however, fails to include information relating to each faculty member's actual number of publications or citation frequency, or distinguish between the more productive and influential faculty members from those who were less so. The evidence does not show, as the petitioner asserts on page 3 of his appellate statement, that "both [his] publication number and the citation [he] received are ranked NO. 1 and superior to all the faculty members from all the top universities." At most, the "Faculty Scholarly Productive Index" demonstrates that the petitioner has published more articles and his articles have been cited more frequently than the average publication number and citation frequency per faculty in all fields at these ten universities. Publishing a higher number of articles than the average in all fields and being cited more frequently than the average in all fields, however, do not establish that the petitioner's published work constitutes contributions of major significance in the field of engineering. While the data from "Citation Averages, 2000-2010, by Fields and Years" is specific to engineering, it still

contains only averages without providing probative information relating to the level of citation indicative of a contribution of major significance in the field of engineering.

Third, evidence relating to the petitioner's two articles being downloaded is insufficient to show that either article constitutes a contribution of major significance in the field. Specifically, the online printout shows that within the 90-day period preceding November 3, 2012, the petitioner's article ranked 18th in a list of most downloaded articles, and his ' article ranked 19th in a list of most downloaded articles. Unlike citations, however, download rankings do not establish who downloaded the articles or whether the articles were ultimately useful to that person.

Finally, the petitioner's two highest cited articles relate to WLSP, consistent with the letters that focus on his work in that area. The petitioner has provided reference letters, supported by citations, showing that his research in LSP and WLSP has influenced related research. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. Even if the petitioner's work on WLSP is a contribution of major significance in the field of mechanical engineering rather than representative of the continuous progression of laser peening, it is only one such contribution. The regulation requires contributions of major significance in the field in the plural.

Accordingly, while the petitioner is a prolific author who has produced useful research on WLSP, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of mechanical engineering. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

In his October 30, 2012 decision, the director concluded that the petitioner has met this criterion. Specifically, the record contains evidence showing that the petitioner has authored a number of scholarly articles published in professional publications, including (1) a June 2012 article entitled (2) a May 2012 article entitled ' (3) a 2011 entitled ; and (4) a 2011 article entitled ' Accordingly, the petitioner has presented evidence of his

authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

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 have 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 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.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d 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.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[5] The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). 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* INA §§ 103(a)(1), 204(b); 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).