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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: NOV 0 4 2014 Office: NEBRASKA 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:

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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and dismissed a subsequently filed motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a film director, 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 in the arts. The director determined that the petitioner had not established the requisite extraordinary ability and did not submit extensive documentation of his sustained national or international acclaim. In addition, the director determined that the petitioner had not established that he was among that small percentage at the very top of his field of endeavor. Further, the director determined that the petitioner did not establish his intent to continue to work in his field of expertise in the United States.

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. The director found that the petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (vii), and (viii), but that he had not sustained national or international acclaim at the very top of the field.

On appeal, the petitioner submits a brief. In the brief, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii) - (iv), and (vii) – (viii) and that the director's final merits determination was in error.

For the reasons discussed below, we will uphold the director's determination that the petitioner has not established his eligibility for the classification sought. We withdraw, however, the director's finding that the petitioner's evidence does not meet the category of evidence at 8 C.F.R. § 204.5(h)(3)(i). We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Furthermore, as will be explained in the final merits determination, the evidence of record does not demonstrate that the petitioner has sustained national or international acclaim at the very top of the field. Finally, the petitioner does not establish his intent to continue to work in his field of expertise in the United States.

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.

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. *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, internationally 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 our decision to deny the petition, the court took issue with our 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 our 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 we 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 we concluded)." *Id.* at 1122 (citing to 8 C.F.R.

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[1] Specifically, the court stated that we 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).

§ 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119-20.

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, we will apply the two-step analysis dictated by the *Kazarian* court.

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.

The director determined that the petitioner did not establish eligibility for this criterion. 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."

The record of proceeding reflects that the petitioner has received the [redacted] at the [redacted] In addition, the petitioner received the [redacted] The petitioner demonstrated that these awards meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). As such, we withdraw the director's decision for this criterion.

Accordingly, the petitioner established 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.

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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. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

The record of proceeding reflects that the petitioner submitted the following documentation:

1. A screenshot from www.iranreview.org entitled, [redacted] by an unidentified author;
2. A screenshot from www.lesinrocks.com entitled, '[redacted]
3. An article from *Variety* entitled, "'[redacted]' on [redacted]
4. A screenshot from www.indiatimes.com entitled, [redacted] by an unidentified author;
5. A screenshot from www.kahrizak.com entitled, [redacted] on an unidentified date, by an unidentified author; and
6. A screenshot from www.thehindu.com entitled, '[redacted]

Regarding item 1, the petitioner did not include the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, the screenshot is about the screening of the movie, [redacted] Regarding item 2, the screenshot is about the film, *The Jar*, rather than material about the petitioner relating to his work. Regarding item 3, the article is about the [redacted] in which the petitioner's film [redacted] is mentioned once in the article. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Regarding items 4 and 5, although the screenshots reflect published material about the petitioner relating to his work, the petitioner did not include the author and/or date of the material as required by the regulation. For these reasons alone, none of this documentary evidence meets the plain language of this regulatory criterion.

Moreover, the petitioner submitted a screenshot from www.iranreview.org claiming that "Iran Review is the leading independent, non-governmental and non-partisan website" and from www.indiatimes.com claiming that "Indiatimes is the most popular Internet and mobile value-added services destination for the global Indian." The petitioner did not submit any independent, objective evidence demonstrating that www.iranreview.org and www.indiatimes.com are professional or major trade publications or other major media. *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 self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media). Furthermore, in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. The petitioner did not establish that international accessibility by itself is a realistic indicator of whether a given website is "major media." In addition, the petitioner did not submit any documentary evidence regarding www.lesinrocks.com and www.kahrizak.com, so as to demonstrate that they are professional or major trade publications or other major media. Finally, although *Variety* is a major trade publication, the article does not reflect published material about the petitioner relating to his work consistent with the plain language of this regulatory criterion.

Regarding item 6, the screenshot reflects published material about the petitioner relating to his work. The petitioner submitted a screenshot from www.thehindu.com indicating that *The Hindu* "has been steadily growing to the circulation of 14,66,304 [sic] copies (ABC: July-December 2009) and a readership of about 4.06 million." The petitioner, however, did not submit any documentary evidence regarding www.thehindu.com, so as to establish that the website is a professional or major trade publication or other major medium. Even if the petitioner were to demonstrate that the website is a major medium, 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)(iii) requires published material in more than one professional or major trade publication or other major medium. 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 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. *Cf. 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).

Accordingly, the petitioner did not establish that he meets this criterion.

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.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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."

The record of proceeding reflects that the petitioner served as a judge at the for Therefore, we concur with the director's decision for this criterion.

Accordingly, the petitioner established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases."

The record of proceeding reflects that the petitioner's films have been displayed at various exhibitions such as the and the Therefore, we concur with the director's decision for this criterion.

Accordingly, the petitioner established 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.

The director determined that the petitioner established eligibility for this criterion. 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 record of proceeding reflects that the petitioner has performed in a leading or critical role as a director for various films such as Therefore, we concur with the director's decision for this criterion.

Accordingly, the petitioner established that he meets this criterion.

B. Summary

The petitioner has satisfied the antecedent regulatory requirement of at least three categories of evidence.

C. Final Merits Determination

We will next conduct 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," 8 C.F.R. § 204.5(h)(2); 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-20.

In evaluating our final merits determination, we must look at the totality of the evidence to determine the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. The weight given to the evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3) depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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." 8 C.F.R. § 204.5(h)(2).

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The petitioner submitted numerous foreign language documents without any certified English language translations. 8 C.F.R. § 103.2(b)(3). Therefore, the foreign language documents are not probative and will not be accorded any weight in making our final merits determination. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989).

As discussed under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner received the [redacted] and [redacted] The petitioner submitted evidence of additional awards such as the [redacted] and the [redacted] Regarding the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner submitted only six articles, one of which was written in 1995, one was written in 2001, three were written in 2009, and one was not dated. Regarding the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the majority of the petitioner's documentary evidence reflected requests to judge film festivals between 1995 to 2003 rather than evidence that he actually participated as a judge. The petitioner, however, did submit evidence that he served as a judge in [redacted]

and in an unidentified year at the Regarding the display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the petitioner submitted documentary evidence of the display of his films at various festivals from 1993 to 2009. Finally, regarding the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has submitted documentary evidence reflecting that he has directed several movies from

The petition was filed on July 12, 2013. The petitioner did not submit any documentary evidence since 2009, approximately four years from the filing of the petition, to demonstrate that he has sustained the required national or international acclaim. The absence of any evidence from 2009 to the filing of the petition in 2013 is not indicative of sustained national or international acclaim at the very top of the field. The petitioner, for example, did not submit any awards that he has garnered in the past four years, that he has participated as a judge of other celebrated directors, that he has had any recent films displayed at exhibitions or festivals, or that he has directed any critically acclaimed films since 2009. The submission of only six articles is not consistent with sustained national or international acclaim for this highly restrictive classification; the petitioner did not submit any evidence of any published material about him for at least the last four years.

In this matter, the evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as a film director. The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(h)(2). The petitioner seeks a highly restrictive visa classification. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim as a film director, or that he was among that small percentage at the very top of the field of endeavor.

III. INTENT TO CONTINUE TO WORK

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.

At the initial filing of the petition, the petitioner submitted a letter stating:

> I . . ., hereby inform you of my decision on continuing my career as a film director should I obtain the green card and residence permit for The United States of America.

> Upon my relocation to the United States, I intend to work with the esteemed film director, Steven Spielberg on feature films.

In the director's request for evidence (RFE) pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the director stated:

> The petition does not indicate that the [petitioner] has prearranged commitments for working in this field. . . . A simple statement of intent to work with a famous director is insufficient evidence that [the petitioner] has a reasonable expectation of employment while working in the United States. Please submit evidence that the [petitioner] is coming to the United States to continue work in the field . . . .

In response to the director's RFE, the petitioner indicated that documents were attached demonstrating that he will continue to work as a director in the United States; however the record of proceeding contains no such documents. In the director's denial, the director stated:

> In its [RFE], the Service specically requested that the petitioner provide evidence of his ability to continue working in his field of expertise while in the United States. The Service specifically requested copies of letters from current or prospective employers or employment contracts. However, no evidence in response to the Service's request has been provided.
>
> No "job offer" is required to qualify under this classification. However, the [petitioner's] statement that he intends to come to the United States to work with Steven Spielberg, absent other evidence, is insufficient to show that he will continue in his claimed area of expertise while in this country.

On motion and on appeal, the petitioner did not contest the director's findings for this issue or submit additional documentation. We, therefore, consider 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).

Notwithstanding, we concur with the director that the petitioner did not establish his intent to continue to work in his area of expertise in the United States. While the petitioner made a general claim that he intends to work with Mr. Spielberg, he did not submit any documentary evidence supporting his future employment with Mr. Spielberg. He has offered no specific details regarding, for instance, any pre-arranged work with Mr. Spielberg. The petitioner's general desire to work with Mr. Spielberg is insufficient to demonstrate a detailed plan of his intention to continue to work in his area of expertise. Furthermore, the record contains no evidence from any other prospective employers reflecting the petitioner's intent to work in his area of expertise in the United States.

Accordingly, the petitioner did not 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. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the individual 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.

Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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

ORDER: The appeal is dismissed.