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

(b)(6)

DATE: NOV 2 8 2014 OFFICE: TEXAS 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:

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, Texas Service Center, denied the employment-based immigrant visa petition on March 31, 2014. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on May 2, 2014. The appeal will be dismissed.

According to the petition and the accompanying documents, filed on July 31, 2013, the petitioner seeks classification as an alien of extraordinary ability in athletics, as a Pilates educator, 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 his 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that the petitioner, as initial evidence, can present evidence of the beneficiary's 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 beneficiary's basic eligibility requirements. Under the regulation at 8 C.F.R. § 204.5(h)(4), the petitioner may submit comparable evidence to establish his eligibility, if the standards under 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation.

On appeal, the petitioner files additional supporting documents and asserts that he meets the criteria set forth under the regulations at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (vi) and (viii). He also asserts that he has submitted comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). 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) or comparable evidence under 8 C.F.R. § 204.5(h)(4). The evidence in the record does not establish that the petitioner has demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we 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 beneficiary's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through initial 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 our decision to deny the petition, the court took issue with our 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 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 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 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 (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.

II. ANALYSIS

A. O-1 Nonimmigrant Visa

USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary. A prior approval of nonimmigrant visa petition does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, No. 03-1083299, 99 F. App'x 556, 2004 WL 1240482 at *1 (5th Cir. Jun. 2, 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

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

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La. Mar. 15, 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of his 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. Indeed, on appeal, the petitioner "concedes that he has not received a one-time achievement such as a major, internationally-recognized award." As such, as initial evidence, the petitioner must present at least

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

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.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that he meets this criterion because he is a Continuing Education Provider (CEP) for the The petitioner has not shown that he meets this criterion.

First, the petitioner concedes that general membership in the is not a qualifying membership under the criterion. Specifically, page 2 of the bylaws state that membership "is open to any individual who is interested in the study and practice of Pilates, supports the objectives of [the , and is willing to contribute to the achievement of the organization's objectives."

The petitioner asserts that he is a CEP, which is a membership class distinct from 's general membership. He cites Article III of the bylaws to support his assertion. The bylaws, however, do not support the petitioner's assertion that he is in a membership class distinct from general membership. According to Article III, "The Board may, in the interests of the establish classes of membership and related qualifications." The petitioner has submitted no evidence showing that the has actually created any class of membership distinct from its general membership. Although the petitioner has submitted evidence showing that he provides continuing education programs for the the petitioner has not submitted any evidence showing that he is in a specific membership class for CEPs. Indeed, in response to the director's request for evidence (RFE), the petitioner submitted a Member Directory, showing that he is a Certified Member, indicative of his general membership.

Moreover, even if the petitioner's status as a CEP for continuing education program constitutes membership in the that is distinct from the general membership, he has not established that the requires outstanding achievements from its CEPs. According to Executive Director of "There are strict criteria for our continuing education providers," including "comprehensive Pilates studies of at least 450 hours, pass the exam with high scores, and are currently maintaining their certification." The Continuing Education Guidelines provides similar information relating to the qualification of CEPs. According to Ms. the petitioner's seminars have been part of the continuing education program since the beginning of 2013. Ms. states that "For coursework approval, [the expect[s] a university degree with relevance to the field, experience of at least five years as a Pilates teacher, as well as at least one year as a teacher of teachers. The presented material needs to be highly relevant to expanding the skill-set of Pilates professionals, and individually researched and sourced." The petitioner has not shown that these qualification requirements constitute outstanding achievements. At best the qualification requirements indicate that a CEP who has completed approved coursework and passed the examination is educated in the teaching of Pilates and

experienced. Qualification requirements based on education and experience do not constitute outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. Significantly, education and ten years of experience are elements that may help demonstrate exceptional ability, a lesser classification. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B).

Second, although the petitioner has submitted evidence showing that he is a member of the [redacted] on appeal, the petitioner does not specifically challenge the director's finding that his [redacted] membership is not a qualifying membership under the criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). The petitioner has also not submitted evidence relating to his [redacted] membership that shows that [redacted] requires outstanding achievements from its members.

Accordingly, the petitioner has not presented documentation of his membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner asserts that he meets this criterion because [redacted] and other industry media sources have published material about him. The record includes online materials from [redacted] a Community News segment on [redacted] guide to several Pilates Classes in [redacted] and merely lists the petitioner's class as one of several other Pilates classes. The material is not "about" the petitioner. Regarding the remaining materials, the petitioner asserts that "it is difficult to obtain circulation materials for many of the industry media sources which have published articles about the [petitioner]," and suggest that we "consider the published material about the [petitioner], even without the circulation information" as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). The petitioner has not shown that he meets this criterion.

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[3] This document appears on myemail.constantcontact.com.

[4] This article is one the petitioner wrote, it is not an article about him, relating to his work.

First, the petitioner has not shown that the online materials that are about him, relating to his work, are in professional or major trade publications or other major media. With the exception of [redacted] the petitioner has submitted no evidence relating to the websites showing that they are professional or major trade publications or other major media. The petitioner has submitted a document pertaining to [redacted] that contains the magazine's logo at the top but no signature. The document does not have the appearance of an official company brochure or other printed promotional material, and does not bear any other indicia of its source, such as a web address. The document suggests that [redacted] is a trade publication, however, the petitioner has not submitted sufficient evidence showing that it is a major trade publication, as required under the criterion. The document states that [redacted] is an online magazine created to advocate and enrich a deeper knowledge of the Pilates technique. The document further states that within the first three months of its founding in February 2013, the magazine "reached a global community of 1,000 readers" and it has continued to grow steadily. It has published 30 articles and offers a biweekly newsletter with 400 subscribers. As the source of this information is not apparent from the face of the document, the information has little probative value.

Even assuming that the document is an official [redacted] document, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007), *aff'd*, 317 F. App'x 680, 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not shown that the reach of the magazine establishes that it is a major trade publication. The petitioner has also not submitted sufficient evidence relating to the reach of other trade publications, to which we may compare the reach of [redacted] to conclude if [redacted] is a major trade publications. The record includes information showing that the [redacted] website has had 6,298 visitors, including 4,371 unique visitors. The petitioner has not submitted sufficient evidence relating to the number of visitors or unique visitors [redacted] has had or information relating to how many visitors or unique visitors a website would have if it is a major trade publication.

Second, some of the submitted online materials do not include information on the date or author of the materials, as required under the criterion. For example, materials from [redacted] and [redacted] lack information on the author and date of publishing, and material from [redacted] lacks the date of publishing.

Third, the petitioner has submitted published materials, including materials from [redacted] and [redacted] that postdate the filing of his petition in July 2013. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of qualifying materials not yet published at the time he filed his petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.")

Fourth, as discussed below, the petitioner has not demonstrated the published material that does not meet the requirements of this criterion is comparable evidence establishing his eligibility for the exclusive classification sought.

Accordingly, the petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. *See* 8 C.F.R. § 204.5(h)(3)(iii).

> *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 because he is the founder of the While the evidence in the record shows that the petitioner's program constitutes an original contribution of major significance in the field, the petitioner has not established that he has made another original contribution of major significance in the field. The plain language of the criterion requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. While the petitioner's program constitutes a single qualifying contribution under the criterion, the evidence in the record does not establish that the petitioner has made another qualifying contribution.

The evidence shows that the petitioner developed his program, a continuing education program designed to bridge modern exercise science with the original teachings of The promotional material includes testimonials from Pilates teachers who recommend the petitioner's program. The petitioner has submitted reference letters that praise his program. According to Ms. the petitioner "is the founder of the education program, which offers high-quality training for Pilates and movement educators." According to a committee chair for the petitioner's " is well-known for [the petitioner's] integrity in respect to the history of the Pilates method, and how he successfully layers current scientific insights into the original method to help teachers around the world understand it better." According to Director of Portugal, the petitioner's " is a household name in the Pilates industry." Mr. states that "By improving the level of education and its accessibility for Pilates teachers, [the petitioner's] work instantly benefits millions of people around the world who practice the method." According to Co-Owner of Sweden, the petitioner's program is "a highly regarded continuing education program" and it "stands out and is well-known for successfully synthesizing both [exercise repertoire and movement theory] elements." According to owner of the petitioner "is well respected as a leading expert in his field for the creation of his continuing education program " The petitioner has shown through his evidence that his program constitutes an original contribution of major significance in the field.

The evidence in the record, however, does not show that the petitioner has made another contribution of major significance in the field. The petitioner is the founder of The petitioner has not shown that the impact of either project rises to the level consistent with contributions of major significance in the field. According to Director of located in Germany, the petitioner launched "a professional networking event that [the petitioner] organized to bring Pilates experts together for discussions on the value of the historical information he researched, and to further share his knowledge." Mr. states that the symposium "was a very successful event and there is a huge anticipation for the upcoming ones." The vague statement that the event was successful is insufficient to show that its impact in the field is consistent with a contribution of major significance. Moreover, on appeal, the petitioner has not pointed to any independent evidence in the record, such as, but not limited to, coverage of the event in major trade publications or nationally circulated publications, which might show the impact of the event in the field.

According to Mr. in March 2013, the petitioner launched "a campaign to raise awareness for Pilates method and to encourage [the petitioner's] followers to adopt a daily movement practice." A printout from wordpress.com indicates that as of May 2014, ten months after the petitioner filed his petition in July 2013, the website had received 53,330 views and 813 comments. As this printout includes views and comments that postdate the filing of the petition, it does not establish what impact had at the time the petitioner filed the petition or show that the impact was consistent with a contribution of major significance in the field. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76. In addition, the printout does not indicate how many people actually viewed or commented on the website, as the same person or people can view and post comments on the website multiple times. As such, the number of views and comments does not establish the impact of the campaign in July 2013, when the petitioner filed the petition. Moreover, the petitioner has submitted an article about the campaign that shows the campaign has received attention from the field. It does not, however, show the actual impact of the campaign at the time the petitioner filed his petition. Indeed, the article concludes with the question, "Will achieve its intended goal and drive a brand-new audience to the Pilates work?" This question indicates that the impact of the campaign is uncertain. Additionally, the article postdates the petitioner's filing of the petition, and does not provide information relating to the impact of the campaign at the time the petitioner filed the petition. Further, Mr. states that the name ' ' has been "adopted by teachers and studios around the world" and that "[t]housands of people have followed these campaigns, including both Pilates practitioners and industry professionals." Mr. does not, however, provide specific information on who has adopted or followed the campaign, or the basis of his knowledge about the reach of the campaign. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *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)). We need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

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.[5] *Kazarian v. USCIS*, 580 F.3d, 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. The opinions of experts in the field are not without weight and have been considered. 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, 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)); *Visinscaia*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (concluding that our decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 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).

On appeal, the petitioner asserts that he meets this criterion because his website "is seen as an authoritative scholarly resource in the Pilates industry" and materials he posts on his website constitute comparable evidence under the regulation at 8 C.F.R. 204.5(h)(4). The petitioner has not shown that he meets this criterion.

The petitioner has presented evidence showing that his writings have been accepted as scholarly articles in the field. According to Ms. , the petitioner's article "

[5] In 2010, the *Kazarian* court reiterated that our 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.

"clarifie[s] the connection between the scientific Pilates method and the artistic dance techniques" and is "an important time-piece that was very well-received by the industry." According to Mr. the petitioner's "articles are respected for their historical authenticity and scientific accuracy, and are often referenced in conversation amongst professionals." According to Mr. the petitioner "has made a name for himself by writing expert articles on his website as well as for other publications, including . . . . His articles are read and discussed amongst Pilates and fitness professionals around the world." According to Co-Founder of , the petitioner has "written numerous scholarly articles on his own website and other publications such as about the history of Pilates method." Although the petitioner has shown his authorship of scholarly articles, he has not established that he meets this criterion.

The petitioner has not presented sufficient evidence showing that his articles have been published in professional or major trade publications or other major media, as required under the plain language of the criterion. First, most of the petitioner's articles are posted on his website. The petitioner, however, has not shown that his website constitutes a *major* trade publication. An online printout from shows that as of July 2013, when the petitioner filed the petition, his website had received 171,980 visits total since July 2011, including 7,756 to 13,857 monthly visits and a daily average of between 268 to 447 visits between January and July 2013. The printout does not indicate how many unique visitors these numbers represent, as the same person or people can view the website multiple times. Moreover, the petitioner has not submitted sufficient reliable and probative evidence showing that the number of views that his website garnered shows that it is a major trade publication. The record includes some evidence relating to other online sources. For example, claims 1,000 readers and 400 subscribers, and had 4,371 unique visitors between October 2013 and January 2014. Although the petitioner's website appears to attract more visitors than these two online sources, the petitioner has not shown that the number of views his website garnered is indicative of its status as a major trade publication. Specifically, the petitioner has not provided information on how many visitors or unique visitors a website would have if it is a major Pilates trade publication, or shown that his website has achieved the requisite number of visitors or unique visitors to qualify as a major Pilates trade publication. Furthermore, the petitioner has submitted updated evidence relating to his website that postdates the filing of his petition. We will not consider such evidence because the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76.

Second, on appeal, the petitioner has not asserted that the other online sources that have posted his articles constitute professional or major trade publications or other major media. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9. Moreover, the petitioner has submitted insufficient evidence relating to these online sources such that we can conclude they are professional publications, major trade publications or other major media.

Third, as discussed below, the petitioner has not demonstrated that his authored articles that do not appear in professional or major trade publications or other major media are comparable evidence to articles that do appear in such media.

Accordingly, the petitioner has not presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that he meets this criterion because he is "a continuing education provider at the " and "has an important role as a workshop presenter at the " The petitioner has not shown that he meets this criterion.

First, the petitioner has not established that he performs either a leading or a critical role for the . The evidence in the record, including Ms. letter, shows that since the beginning of 2013, the has included the petitioner's workshops and seminars as part of its continuing education program. Although Ms. praises the quality of the petitioner's seminars and workshops, she does not state that they are critical to the Instead, the evidence shows that continuing education program has been in place, with other professionals offering seminars and workshops, before the petitioner began to offer his workshops and seminars. Moreover, the evidence does not indicate that within a few months – between the beginning of 2013 and July 2013 when the petitioner filed his petition – his seminars and workshops had become critical to the The petitioner has also not submitted any evidence showing that he holds a position within the such that he performs a leading role within the

Second, on appeal, the petitioner submits evidence relating to the showing that it is scheduled to take place in November 2014. The promotional evidence shows that the petitioner will be one of over 60 presenters at the meeting. A March 2014 email shows that the has approved the petitioner's application to present his workshop ' at the annual meeting. The petitioner has not shown that being one of over 60 presenters is indicative of the petitioner performing either a leading or critical role at the conference. Moreover, the conference postdates the petitioner's filing of the petition. We will not consider this evidence as it does not establish he petitioner's eligibility at the time he filed his petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76.

Third, the petitioner has submitted evidence of his involvement with other organizations, including On appeal, however, the petitioner has not asserted that his involvement in these organizations meets this criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the petitioner has not presented evidence that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

> *If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.* 8 C.F.R. § 204.5(h)(4).

On appeal, the petitioner asserts that he should be allowed to submit comparable evidence to establish that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(iii) and (vi), because the field has "so few major publications" and "does not have many literary resources as source material or major trade publications either online or in print format." The petitioner, however, has not pointed to any evidence in the record that supports his assertions. None of the reference letters the petitioner has filed indicate that the field has "so few" major trade publications or a limited number of literary resources. Unsupported assertions in an appellate brief do not constitute evidence. *See Braga*, No. CV 06 5105 SJO, at 7; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even assuming *arguendo* that the petitioner's assertions are correct, that the field has only a few major trade publications and literary resources, the petitioner has not shown that the criteria under 8 C.F.R. § 204.5(h)(3)(iii) and (vi) do not readily apply to the petitioner's occupation. Specifically, both criteria require publication of either material about the petitioner relating to his work, 8 C.F.R. § 204.5(h)(3)(iii), or the petitioner's scholarly articles, 8 C.F.R. § 204.5(h)(3)(vi), "in professional or major trade publications or other major media." Even if there are only a few major trade publications, the petitioner has not shown that the very few major trade publications and/or other major media could not publish material about the petitioner relating to his work or publish scholarly articles the petitioner has authored. Assuming the petitioner's assertions are true, the petitioner has shown that it might be challenging for him to meet these two criteria, not that these two criteria do not readily apply to the petitioner's occupation. *See* 8 C.F.R. § 204.5(h)(4).

Moreover, as relating to the criterion under 8 C.F.R. § 204.5(h)(3)(iii), the petitioner has submitted published materials in trade publications and other online sources. The fact that the petitioner has not shown that the trade publications and other online sources are "major trade publications or other major media," as required under the criterion, does not render the submitted evidence comparable evidence that establishes the petitioner's eligibility. Rather, the submitted evidence constitutes published materials that do not rise to the level that meets the standard set forth under 8 C.F.R. § 204.5(h)(3)(iii). Although the petitioner asserts that "it is difficult to obtain circulation materials for many of the industry media sources which have published articles about [him]," the petitioner has not pointed to any evidence in the record that supports this conclusory statement As stated above, unsupported assertions in an appellate brief do not constitute evidence. *See Braga*, No. CV 06 5105 SJO, at 7; *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Further, we need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. at 17.

Similarly, as relating to the criterion under 8 C.F.R. § 204.5(h)(3)(vi), the petitioner has submitted evidence of his scholarly articles published in trade publications and other online sources. The fact that the petitioner has not submitted sufficient evidence showing that his scholarly articles have been published in the few major trade publications does not render the submitted evidence comparable evidence that establishes the petitioner's eligibility. Rather, the submitted evidence constitutes the petitioner's authorship of scholarly articles that do not rise to the level that meets the standard set forth under 8 C.F.R. § 204.5(h)(3)(vi).

Furthermore, other evidence in the record does not establish that the petitioner has established his eligibility for the exclusive classification sought. The record includes evidence that the petitioner has researched and written about the life and teachings of [redacted] the petitioner has a social media presence and following, and the petitioner has offered his workshops and seminars in several countries. The evidence shows that the petitioner is a successful Pilates educator whose work has received some attention in the field. This limited attention is not sufficient to show the petitioner's eligibility for the exclusive classification sought. Specifically, the evidence does not establish that he 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)(3); *see also* section 203(b)(1)(A) of the Act.

C. Summary

We have considered all evidence in the record and conclude that the petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of presenting at least three types of evidence under 8 C.F.R. § 204.5(h)(3)(i)-(x) or establish his eligibility through comparable evidence under 8 C.F.R. § 204.5(h)(4).

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 the beneficiary having: (1) a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that [he] has sustained national or international acclaim and that his [] 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 we conclude 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, we need not explain that conclusion in a

final merits determination.[6] 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, and he has not submitted comparable evidence establishing his eligibility. *See* 8 C.F.R. 204.5(h)(4).

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

ORDER: The appeal is dismissed.

[6] We maintain *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, we maintain 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).