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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 07 2010

SRC 07 267 54210

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business.[1] The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that her age at the time of filing should allow for the submission of comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). The petitioner's age at the time of filing, however, does not relieve her from demonstrating that she meets the applicable statutory and regulatory requirements for this classification.

I. Law

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only

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[1] At the time she filed the petition, the petitioner indicated that she was in the United States as an F-1 nonimmigrant student.

to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) 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;
>
> (iii) 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;
>
> (iv) 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 specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's

evaluation of evidence submitted to meet a given evidentiary criterion.[2] 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.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 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 *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian.* As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on August 9, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an economic and political consultant. The petitioner states:

> I have recently joined the Centennial Group Inc. – consulting firm that mission is concentrated on policy and strategic advisory and I am involved in the leadership issues in the Emerging Markets Forum – their non profit organization that includes 57 countries and

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

its goal is to bring together high-level government and corporate leaders form around the world for dialogue on key economic, financial and social issues.

The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[3]

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

The petitioner submitted a certificate of acknowledgement from the Electoral Campaign Headquarters of Vice-Marshal of the Seym of the Republic of Poland expressing "heartfelt acknowledgments for [the petitioner] for her personal commitment and contribution during the campaign for elections to the Polish Seym A.D. 2001." The petitioner also submitted an October 8, 2001 certificate of thanks from the Democratic Left Alliance and the Labor Union expressing appreciation for her "contribution to the electoral campaign of the Alliance of the Democratic Left and the Labor Union." There is no evidence showing that these certificates equate to nationally or internationally recognized prizes or awards for excellence, rather than simply acknowledgments of the petitioner's participation in the electoral campaign. The record does not include information from the presenting organizations explaining the significance of these certificates, specifying the nature of the petitioner's contribution, or indicating the number of other recipients. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the preceding certificates are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that she meets this criterion.

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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a January 12, 2005 letter from the president of the HL7 Society in Warsaw, Poland stating that she is a "member of the Audit Commission of the Society." The petitioner also

[3] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

submitted a resume stating that she is a member of the Public Administration Theory Association (PATA). In a statement submitted in response to the director's request for evidence, the petitioner asserts that she is "a member of the Global Women's Network (GWN)." The record, however, does not include evidence of the petitioner's membership in the PATA or the GWN. The petitioner's assertion that she is GWN member and the self-serving claim in her resume that she is a PATA member are not sufficient to meet the burden of proof for this regulatory criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of her PATA and GWN memberships do not exist or cannot be obtained. Further, her resume and the statement submitted in response to the director's request for evidence do not equate to secondary evidence or affidavits.

Nevertheless, there is no evidence (such as membership rules or bylaws) showing that the HL7 Society, the PATA, and the GWN require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, the petitioner has not established that she meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily 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. An alien would not earn acclaim at the national level from a local publication. 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.[4]

The petitioner submitted a brief article about her and another student in the September 26, 2005 issue of *Forum*, a Grand Valley State University newsletter, entitled "First ELS [English Language Systems] graduates enroll at Grand Valley," but the author of this material was not identified as required by the plain language of this criterion. Moreover, there is no evidence (such as circulation

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[4] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

statistics) showing that this university newsletter qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted articles in *Liderzy* that were accompanied by photographs of her posing with others, but it appears that these articles were authored by her rather than written about her. In response to the director's request for evidence, the petitioner submitted an article and an accompanying photograph in *Rzeczpospolita* entitled "The Left announces victory," but the author of the material was not identified. The article in *Rzeczpospolita* and some of the articles in *Liderzy* were unaccompanied by English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3) and by the plain language of this criterion. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. While the accompanying photograph in *Rzeczpospolita* shows the petitioner in a crowd of onlookers standing behind a speaker at a podium, the article was not about her. The plain language of this regulatory criterion requires "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The published photographs showing the petitioner in a crowd of onlookers or posing with various officials do not meet these requirements. Finally, there is no evidence showing that *Rzeczpospolita* or *Liderzy* qualify as professional or major trade publications or other major media.

In light of the above, the petitioner has not established that she meets this criterion.

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

In response to the director's request for evidence, the petitioner submitted a letter from of the Republic of Poland, stating:

> I declare that [the petitioner] prepared internal documentation and economic-political analyses during the Parliamentary elections in Poland in 2001 for the candidates for the Head of the Seym (the House of Representatives) of the Republic of Poland and for the Ministry of Administration. Moreover, she has written and prepared materials for internal use on the same topics for my office.

On appeal, counsel asserts that "preparing documentation to the sitting president is clearly an achievement that shows [the petitioner] has original business-related contributions of major significance in the field." The record, however, does not include copies of the documentation and analyses prepared by the petitioner. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Morover, letter does not provide specific examples of how the petitioner's original work significantly influenced or impacted her field.

The petitioner submitted additional letters of support from her educators, employers, community contacts, and professional colleagues discussing her activities in the field and her educational background. The brief letter from and the other letters of support do not specify exactly what the petitioner's original contributions in the economic and political arenas have been, nor is there an explanation indicating how any such contributions were of major significance in those fields. For example, the letter from School of Public and Nonprofit Administration, Grand Valley State University (GVSU), states:

> [The petitioner] is one of several students from Poland who have earned the MPA [Master's of Public Administration] at GVSU and she has more than upheld the tradition of excellence that they have established here. She came to our school with a strong education and experiential background and distinguished herself by working hard at improving her English language skills and applying them to advanced work in Public Administration. From August 2005 to May 2006, [the petitioner] served as a research assistant for the school and did an excellent job. She completed her degree on schedule, with very good grades, and has a bright future in public policy and administration, or any other related field.

states that the petitioner "has a bright future," but his letter does not provide specific examples of how the petitioner's original work has significantly influenced the field of public policy and administration, or any other field. It is not enough to show promise and to have others attest to one's talent. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner was involved in Polish election campaigns and various community events, the submitted documentation does not establish that she has made original scientific contributions of "major significance" in her field commensurate with sustained national or international acclaim. For example, the record does not indicate the extent to which her work has impacted others in her field nationally or internationally, nor does it show that the field has significantly changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an individual who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly

acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted evidence of her authorship of articles in *Liderzy* and *Progress for Poland*. The petitioner also submitted a letter from of *Progress for Poland*, describing his online publication as a local Polish media source in Chicago. The petitioner's initial submission also included an English language translation of a January 12, 2005 letter from Subeditor of *Liderzy*, stating: "*Liderzy* is a free monthly magazine of national circulation, reaching such circles as the Parliament, the Senate and business elite." The record, however, does not include a copy of original letter in Polish. Further, the self-serving claim from the subeditor of *Liderzy* does not establish that his magazine has national circulation or otherwise qualifies as a form of "major" media. There is no evidence (such as objective circulation information from an independent source) showing the distribution of *Liderzy* and *Progress for Poland* relative to national media in Poland or the United States to demonstrate that the submitted articles were published in professional or major trade publications or some other form of major media. Accordingly, the petitioner has not established that she meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The English language translation of the January 12, 2005 letter from states that the petitioner served "as Marketing Director and Editor in the issues concerning Polish Community Abroad." The petitioner also submitted a June 25, 2007 letter from stating that the petitioner "was employed by *Liderzy* magazine from 2002 to 2005 as a Marketing Director." Page 3 of several issues of *Liderzy* submitted by the petitioner identify her as the magazine's Marketing Director, which appears to be a leading role. The record, however, does not include evidence showing that this magazine has a distinguished reputation when compared to other Polish media.

The letter from states: "[The petitioner] started the cooperation with . . as an editor bringing her knowledge and experience about Polish community in Michigan. Currently, she is our editor in Washington, DC, covering political, sociological and cultural issues in our publication." There is no evidence demonstrating that the *Progress for Poland* has a distinguished reputation when compared to other United States media. Moreover, there is no evidence showing that her editorial position was leading or critical to the publication. For instance, there is no organizational chart or other evidence documenting how the petitioner fits within the general hierarchy of *Progress for Poland*'s management. The petitioner's

evidence does not demonstrate how her editorial position differentiated her from the other editors and writers, let alone the publication's senior management.

On appeal, counsel asserts that that the petitioner is an "active member of Global Women's Network and participates actively" in the organization, but there is no letter of support or credential from the GWN verifying her membership. Counsel and the petitioner's assertions that she is GWN member are not sufficient to meet the burden of proof for this regulatory criterion. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of her GWN membership does not exist or cannot be obtained. Further, her statement submitted in response to the director's request for evidence does not equate to secondary evidence or an affidavit. Moreover, there is no evidence showing that the GWN has a distinguished reputation or that the petitioner's role for organization was leading or critical.

The petitioner's appellate submission includes an April 26, 2009 letter of support from stating that the petitioner "led a public relations company that provided insight into international leadership areas. She has assisted on successful political campaigns at the local and national level both in Europe and in the U.S." letter does not specifically identify the public relations company led by the petitioner or her position within the company. The opinions expressed by do not establish that the unidentified company has a distinguished reputation or that the petitioner was responsible for its success or standing to a degree consistent with the meaning of "leading or critical role."

In light of the above, the petitioner has not established that she meets this criterion.

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

The June 25, 2007 letter from states: "[The petitioner] was employed by *Liderzy* magazine from 2002 to 2005 as a Marketing Director. Her salary was approximately 3,000.00 PLN per month . . . . The average annual salary in Poland for 2002-2005 was about 9,000 PLN . . . ." The "average annual salary" figure for Polish workers in general is not an appropriate basis for comparison. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." letter does not provide salary data for marketing directors or publication managers. In this instance, there is no evidence showing that the petitioner's salary was significantly high in relation to others in her particular field. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel cites the regulation at 8 C.F.R. § 204.5(h)(4) and argues that the petitioner's age (29 years old at the time of filing) "should not be equated with inexperience or a lack of extraordinary skills." The director's decision, however, did not identify the petitioner's age a basis for denial. Counsel further states: "A person of age 29 may not be able to show similar long list of publications, prizes and other documentation that [sic] at the age of 59 or 79." As discussed previously, the petitioner's age at the time of filing does not relieve her from demonstrating that she meets the applicable statutory and regulatory requirements for this classification. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the documentation of record specifically relates to several of the preceding regulatory criteria. Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Moreover, we cannot conclude that experience or education in the areas of Public Policy or Administration equates to comparable evidence of achievements and recognition commensurate with sustained national or international acclaim at the very top of the petitioner's field. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(3) and (4).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we must 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." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 2010 WL 725317 at *3.

In this case, the specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The submitted evidence is not commensurate with sustained national or international acclaim and there is no indication that the petitioner's achievements have been recognized in the field through extensive documentation. Several of the individuals offering letters of support discuss the petitioner's activities with the Polish American community in Michigan and her "internship" with the City of Grand Rapids in 2006. The record, however, does not establish that such local activities are indicative of national or

international acclaim in public administration, economics, or politics. The letter of support from [redacted] describes the petitioner as having a "bright future" in public policy and administration, but there is no evidence demonstrating that her original work has had a significant impact in the field at large. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. Moreover, with regard to the petitioner's articles, there is no evidence that they have attracted a level of interest in her field commensurate with sustained national or international acclaim. Even in the aggregate, the submitted evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.