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



**U.S. Citizenship
and Immigration
Services**

B₂

FILE:

[REDACTED]
SRC 09 211 52728

Office: TEXAS SERVICE CENTER

Date:

APR 08 2010

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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).

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 and/or education. The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the beneficiary demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. 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). 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 criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means 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).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines the following ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

- (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.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.*

The court stated that the AAO's approach 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

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

This petition, filed on July 8, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an entrepreneur. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

Counsel claims the petitioner's eligibility for this criterion is based on his company's success. Counsel alleges the petitioner's firm, Atlantica Investimentos, is ranked in first place among investment companies that manage pension funds in a single fund of investment and ranked seventy-eighth place among all other security investment companies in Brazil by *Institutional Investor* magazine. In an attempt to fulfill this criterion, the petitioner provided two articles from *Institutional Investor* from the May and July issues in 2008. The petitioner provides financial advice in both articles. The May issue describes Atlantica Investments as "an asset that has begun to act in the Brazilian market recently," which specializes in "investment abroad." The petitioner also provided another article from *Institutional Investor* from its March 2009 issue, that states that "Atlantica Administradora de Recursos which is considered the most focus company in pension funds, according to the ranking, obtained a growing of 10,22% in volume of financial assets in a period of six month ended on December 2008." The petitioner submitted two additional articles from *Institutional Investor* from August 2008 and March 2009, which contain graphs and articles regarding the "Top Asset(s)." However, no translations for either article were provided as required by 8 C.F.R. § 103.2(b)(3). On appeal, this criterion was not claimed and no additional evidence was provided.

The plain language of this regulatory criterion requires the petitioner's "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Therefore, even if the petitioner provided documentary evidence of the claimed rankings, which he has not, he also failed to establish that such rankings constitute nationally or internationally recognized prizes or awards and that they were "received" by the petitioner.

The record lacks evidence to demonstrate to what extent the petitioner was responsible for the rankings received by the company. Without providing evidence showing his exact contributions in such rankings, it cannot be inferred that the petitioner's work was responsible for the receipt of this "award." Moreover, it is not clear that a ranking would constitute an award or prize.

Further, there was no documentation regarding the prestige, selection process or other investment firms that the petitioner's firm was competing against for its ranking. As such, the petitioner failed to establish the national or international recognition of these "awards."

Accordingly, the petitioner has not established that his company's rankings constitute his receipt of nationally or internationally recognized prizes or awards, and therefore has not established that he meets this criterion.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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 regulation, 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.³

The petitioner provided the following evidence to satisfy this criterion:

1. An article entitled, "Route of Investment is a two way street," dated May 2008, without an author, from the *Institutional Investor*;
2. An article entitled, "Main subjects debated in the conference," dated July 2008, without an author, from the *Institutional Investor*;
3. An article entitled, "Precaution is used by the institutions to do new investments," dated March 2009, without an author, from the *Institutional Investor*;
4. An internet page from the *Institutional Investor's* website, indicating that its circulation is 12,000 copies;
5. A brochure from Atlantica Investimentos that provides general information; and
6. An August 2008 article with no translation.

No new evidence was submitted on appeal regarding this criterion. In his decision, the director found that the petitioner failed to satisfy this criterion, and we concur with his decision.

The articles were not primarily "about the alien," as the plain language of this regulatory criterion requires. While the articles mentioned the petitioner, the articles were instead about investment options or, as acknowledged by counsel on appeal, "about a seminar on new opportunities to invest abroad" with the petitioner offering his opinions regarding such topics.

Moreover, the record contained limited and inadequate evidence to prove that the *Institutional Investor* is a professional or major trade publication or some other form of major media. While item 4 contained some background information regarding the publication, such information came directly from the publication's own website. There was no independent evidence to support that the *Institutional Investor* is a professional or major trade publication or some other form of major media.

³ 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.

Further, this criterion also specifically requires that the evidence submitted contain a title, date, author and translation, if necessary. All the articles (items 1 through 3) failed to include an author. Items 2 and 3 were only excerpted translations not the full translation required by 8 C.F.R. § 103.2(b)(3). Further, item 6 contained no translation as required by 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3). Accordingly, we cannot rely on this evidence. Without the proper translation required by regulation we can afford no weight to this evidence.

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

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

Counsel, in his initial brief, claims the petitioner is eligible for this criterion stating that he was a “mentor of a fund of investment based on the Sovereign Debt of Brazil” and the fund is “presenting extraordinary results.” To this end, the petitioner submitted a brochure regarding his fund. The petitioner also provided several reference letters, which were also submitted for the criteria under 8 C.F.R. § 204.5(h)(3)(viii). However, none of these letters have proper translator attestations. 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. The preceding letters were not certified by the translator as required by 8 C.F.R. § 103.2(b)(3).

Nonetheless, even if we were to examine such reference letters, the petitioner still fails to meet this criterion. A letter from [REDACTED] broadly addressed the role that the petitioner played for [REDACTED] by stating that,

[W]ithout his experience and his work, [it] would not be impossible to achieve such excellent results such as the ones he obtained managing the Brazil Sovereign Fund.

The petitioner also submitted a letter, dated June 23, 2009, from [REDACTED] Distribution at Endicon. [REDACTED] letter explained that the petitioner worked for Endicon as Chief Financial Officer from 1989 to 1999, and that while in that position he “developed various projects, essential to the growth of our (the) company.” The petitioner also provided a letter, dated June 18, 2009, from [REDACTED] who stated that the petitioner has “exceptional professional abilities.” Additionally, [REDACTED] stated that the petitioner anticipated the global crisis and “created operations with protected capital, minimizing larger losses and as a result placing himself in a top position of reference among the other professionals of institutions of the financial market.”

On appeal, no new evidence was provided. However, the petitioner’s appeal brief argued that the previously provided recommendation letters support his contention that he has made original contributions of major significance.

The burden is on the petitioner to establish the significance of his work. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it has attracted sustained attention, had a demonstrable impact on his field at the national or international level or other commensurate evidence. The petitioner has not shown, for instance, how the field has changed as a result of his work so as to establish it was a contribution of major significance to his field.

Moreover, although the reference letters provided by the petitioner contain useful information about his qualifications and help in assigning weight to certain evidence, such letters were not submitted with the requisite translator certifications. Further, reference letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances. While the record includes attestations of the potential impact of the petitioner's work, none of the petitioner's references provide specific examples of how the petitioner's work is already influencing the field beyond the limited projects on which he has worked. While the evidence demonstrates that the petitioner is a talented and successful financial executive, it falls short of establishing that the petitioner has made contributions of major significance.

Accordingly, the petitioner has not 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.

Counsel, in his initial brief, claimed that he performed a critical role for his employers, including [REDACTED]. The petitioner submitted a reference letter from [REDACTED], Institute of the Pension Funds for the Brazilian Post Office. [REDACTED] broadly addresses the role that the petitioner played for Postalís by stating in his letter that:

[H]is role in the management of a part of our assets was critical and without his experience and his work, would be impossible to achieve such excellent results such as the ones he obtained managing the Brazil Sovereign Fund, of which he is the manager and mentor of its strategies.

Further, [REDACTED] comments that the petitioner's achievement has placed him in "a position of superiority over his peers." The petitioner also submitted a letter, dated June 23, 2009, from [REDACTED]. As previously mentioned, [REDACTED] letter confirmed that the petitioner worked for Endicon, as Chief Financial Officer from 1989 to 1999. Regarding the petitioner's responsibilities at Endicon, [REDACTED] stated that the petitioner "developed various projects, essential to the growth of our (his) company." The petitioner also provided a letter, dated June 18, 2009, from [REDACTED] who stated that the petitioner was "critical to the success of the FIDE bonds, in which he presented an incredible performance." The petitioner also submitted two articles from *Institutional Investor* from August 2008 and March 2009,

which were previously submitted, that contain graphs and articles with the ranking of Atlantica Investimentos. However, no translations for either article were provided.

On appeal, no additional evidence was provided. Nonetheless, the petitioner again cites to the aforementioned recommendation letters and articles. In addition, the appeal brief describes the petitioner's responsibilities during his employment at Endicon, Atlantica Investimentos and Postailis but provides no documentary evidence to support the claims. However, 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)).

The director found that the petitioner failed to satisfy this criterion, and we agree. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. There was little discussion of his role or responsibilities within any of the organizations. The reference letters provided by the petitioner failed to specifically describe the petitioner's responsibilities. For example, [REDACTED] stated that the petitioner "developed various projects, essential to the growth of our (his) company," yet did not specify what the projects entailed, how many projects he developed or how his company grew as a result of the petitioner's involvement.

Similarly, there is no evidence demonstrating how the petitioner's role differentiated him from others where he worked. For instance, the petitioner did not submit evidence such as an organizational chart which would demonstrate the petitioner's position within the organization. Mere title, without specific information regarding actual duties or explanation of relevance or importance of that position within the hierarchy of the organization's management is not sufficient to establish the petitioner's leading or critical role. Although [REDACTED] praises the petitioner's achievements and states that they have placed him in "a position of superiority over his peers," [REDACTED] does not address who he is referring to as the petitioner's "peers." Therefore, while the petitioner may have proven that he provided valuable services to his employers, he has failed to support the proposition that he has performed a leading or critical role for those organizations.

Lastly, the evidence further lacks proof that the firms for which the petitioner served or was employed by had "distinguished reputations." There was limited independent information to demonstrate each company's standing in the community or world.

Moreover, all the evidence provided for this criterion consists of reference letters. As previously stated, the translations provided for the reference letters failed to provide a proper translator certification. As such, these letters should not be considered as evidence. Nonetheless, we have read and analyzed these letters in making our determination regarding this criterion.

The petitioner has not established that he 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.

Prior to appeal, the petitioner submitted a copy of his Form 1099, which indicates that in 2008 he was compensated by [REDACTED] as a nonemployee for over 6 million dollars. The petitioner also submitted his 2007 Form 1099 which indicates that [REDACTED] provided him with over 3 million dollars as a nonemployee. The petitioner also provided a Form 5471, which is an information return of U.S. persons with respect to certain foreign countries, regarding the stock that the petitioner owned in 2007 of Atlantica Administracao de Recursos.

On appeal, the petitioner submitted additional information, including a printout from the Foreign Labor Certification Data Center, which provided the median wages for “financial managers,” an article from *Forbes*, dated July 2009, which stated that the average salary for bankers was “around \$900,000 this year,” and a page from www.askmen.com, which indicated the highest salary for a Chief Executive Officer is \$140,880. The petitioner’s submission also included a 2009 Salary Guide for Brazil from Robert Half, which indicated that 540,000 per year in Brazilian currency is the top salary for “Finance Directors.”

We find this evidence, combined with other evidence in the record, to sufficiently establish that the petitioner meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel initially argued that he fulfills this criterion because Atlantica Investimentos “achieved high revenues and is managing over \$300 million in a portfolio of securities.” On appeal, the petitioner refers to the various articles from *Institutional Investors* which he feels demonstrate the success of the company. However, no new evidence was provided on appeal.

In his decision, the director found that the petitioner had not met this criterion. The director held that this criterion does not readily apply to the claimed field of endeavor. We agree that the plain language of the criterion requires evidence of commercial success *in the performing arts*. As no claim has been made that the petitioner’s field involves the performing arts, the petitioner cannot satisfy this criterion.

Even if the category were expanded to include commercial success in all fields, no documentary evidence was provided to support this criterion. This regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts.” Simply submitting articles which show the petitioner’s investment firm has made good investments, does not demonstrate “sales” or “receipts.”

The record does not include evidence of documented “sales” or “receipts” showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field.

Accordingly, the petitioner failed to establish that he meets this criterion.

B. Comparable Evidence

Counsel argues in his appeal brief that “comparable evidence may be submitted where the listed categories are inapplicable.” 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) of which the petitioner has claimed that he meets four. Where an alien is simply unable to meet three of the regulatory criteria, 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, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. The petitioner failed to specifically address which evidence would qualify as comparable evidence. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires “extensive documentation” of sustained national or international acclaim. *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). The commentary for the proposed regulations implementing the statute 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).

C. Additional Issues

Counsel contends on appeal that the director should have requested further evidence with regard to the criterion regarding a high salary under section 203(b)(1)(A)(ix) before denying the petition. Pursuant to 8 C.F.R. § 103.2(b)(8), the director is required to request additional evidence in instances “where there is no evidence of ineligibility, and initial evidence or eligibility information is missing.” *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Regardless, as discussed above, we have found the petitioner meets this single criterion.

D. 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.” 8 C.F.R. § 204.5(h)(3). *See 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) and (4). The petitioner submitted documentation relating to his claimed achievements in business. While the petitioner has established that he meets a single evidentiary criterion, he fails far short of meeting any additional criteria and has failed to submit sufficient documentation to show that he has been recognized in his field, that he has demonstrated national or international acclaim and that he is at the top of his field. For instance, as it relates to the criterion at 204.5(h)(3)(1), and (v) although the petitioner has demonstrated that the companies that he has worked for have been recognized and are currently successful, he has failed to provide any evidence that his work has had any impact on his field and that he has been recognized on a national or international level. The submitted evidence is not indicative of the petitioner's sustained national or international acclaim at the very top of his field. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the 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 himself to such an extent that he may be said to have achieved sustained national or international acclaim and 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 his 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.