



U.S. Citizenship  
and Immigration  
Services

B2

[Redacted]

DATE: **DEC 19 2012** Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*M Deadend*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) as a film producer.<sup>1</sup> The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim. The director also determined that the petitioner had not established that she was among that small percentage at the very top of her field of endeavor.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On October 1, 2012, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information regarding documentation that she submitted in support of the petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." The AAO's notice of derogatory information stated:

You submitted multiple documents identifying yourself as both [REDACTED]

[REDACTED] However, the Internet Movie Database, a comprehensive online database of information related to films, does not list you in the "full cast and crew" credits as having produced the film. See <http://www.imdb.com/title/tt1223082/fullcredits#cast>, accessed on September 13, 2012, copy incorporated into the record of proceeding and attached to this notice. Thus, the documents identifying you as a Producer and an Executive Producer of the film appear to be false. [REDACTED] in its original packaging and specify where in the video footage that your name is listed as a producer in the film's credits.

You submitted a November 11, 2009 photocopied letter allegedly written by [REDACTED] of the Los Angeles Film Teachers Association (LAFTA) that misspells the word

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<sup>1</sup> According to the petitioner's Form I-94, Departure Record, she was last admitted to the United States on August 20, 2010 as a B-2 nonimmigrant visitor for pleasure.

“association” as “ASSOCIATION” and that contains multiple grammatical errors in the third paragraph. This letter does not include an address, a telephone number, or any other information through which its author can be contacted. According to the California Secretary of State’s database of corporations, the status of the [REDACTED] has been “SUSPENDED” since 1991. See <http://kepler.sos.ca.gov/cbs.aspx>, accessed on September 13, 2012, copy incorporated into the record of proceeding and attached to this notice. Please submit the original of [REDACTED] November 11, 2009 letter. In addition, as there is no reliable evidence confirming that the [REDACTED] was an active association in California in November 2009, please submit competent and objective documentary evidence demonstrating the viability of the [REDACTED] as of 2009 and an updated letter with proper contact information from [REDACTED] or a current officer of the [REDACTED] affirming the full content of the November 11, 2009 letter.

On appeal, you submitted the following:

1. “AGREEMENT on managing a film making process titled ‘Occasional record’” dated 15<sup>th</sup> August 2008;
2. “AGREEMENT on managing a film making process titled ‘Deadlock joy’” dated 4<sup>th</sup> March 2009;
3. “AGREEMENT on managing a film making process titled ‘108 minutes’” dated 1<sup>st</sup> October 2009;
4. “AGREEMENT on managing a film making process titled ‘Start with yourself’” dated 1<sup>st</sup> March 2010; and
5. “AGREEMENT on managing a film making process titled ‘Rock-n-Ball’” dated 10<sup>th</sup> June 2010.

Regarding your remuneration for each project, the agreements all establish specific dates and amounts for which you would be paid.

You signed all five of the preceding agreements on page three. The section above your signature on each agreement lists your “Passport information: series.....BB, number... [REDACTED], issued on.....17.10.1997 by [REDACTED] in [REDACTED]” The record of proceeding reflects that your current Ukrainian passport number is [REDACTED] and that your passport was issued on August 5, 2008. The AAO notes that the preceding five agreements were all executed after you had been issued Ukrainian passport number [REDACTED] and they do not correctly identify the valid passport that had been issued to you at the time all five agreements were signed. You must submit competent and objective documentary evidence overcoming the discrepancies regarding the incorrect passport identified in the preceding five agreements.

The regulation at 8 C.F.R. § 103.2(b)(5) provides, in part:

*Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will set a deadline for submission of the original document. Failure to submit the requested original document by the

deadline may result in denial or revocation of the underlying application or benefit.

Please submit the original of your Ukrainian passport series BB, number [REDACTED] "issued on 17.10.1997 by [REDACTED]" that you used to execute the five agreements identified above. In addition, please submit your original bank statements from 2009 – 2011 showing the actual transactions in which you received full payment in U.S. dollars in accordance with the dates and amounts specified in Section 4.1 of all five agreements. Also, please include proper contact information for your bank so that the balances and payment transactions can be verified.

\* \* \*

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Pursuant to the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 33 days in which to respond to the AAO's notice. The petitioner responded to the AAO's notice with evidence overcoming the Ukrainian passport issue, but she failed to submit the motion picture [REDACTED] and the original of [REDACTED] November 11, 2009 letter. In addition, the petitioner failed to submit documentary evidence showing that she received full payment in U.S. dollars in accordance with the dates and amounts specified in Section 4.1 of the [REDACTED] agreements with [REDACTED]. Specifically:

1. The "AGREEMENT on managing a film making process titled 'Occasional record'" dated August 15, 2008 identifies the petitioner as "Executive Producer" and states in Section 4.1 that "the Customer shall pay the Executive Producer USD 15 000.00 (fifteen thousand dollars) monthly during the whole film production period, that is 7 (seven) months. A total remuneration amount is USD 105 000.00 (one hundred and five thousand dollars). The final payment date is 01.03.2009 [March 1, 2009]." The petitioner failed to submit original bank statements showing that she received the preceding payments as specified in the agreement.
2. The "AGREEMENT on managing a film making process titled 'Rock-n-Ball'" dated June 10, 2010 identifies the petitioner as "Executive Producer" and states in Section 4.1 that "the Customer shall pay the Executive Producer USD 23 000.00 (twenty three thousand dollars) monthly during the whole film production period, that is 11 (eleven) months. A total remuneration amount is USD 253 000.00 (two hundred fifty three thousand dollars). The final payment date is 29.04.2011 [April 29, 2011]." The

petitioner failed to submit original bank statements showing that she received the preceding payments as specified in the agreement.

Regarding the petitioner's failure to submit the motion picture [REDACTED] the original of [REDACTED] letter, and the original bank statements showing that the petitioner received payments as specified in Section 4.1 of the above "Occasional Record" and "Rock-n-Ball" agreements, the regulation at 8 C.F.R. § 103.2(b)(5) provides: "Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application or benefit." Further, the regulation at 8 C.F.R. § 103.2(b)(13)(i) states: "If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. Moreover, the regulation at 8 C.F.R. § 103.2(b)(14) provides: "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition." Based on the petitioner's failure to submit the requested evidence in response to the AAO's notice, this petition cannot be approved.

In an October 31, 2012 letter responding to the AAO, counsel states:

[The petitioner] is the victim of an unethical paralegal, or notario, that represented that he could provide a service that he was unqualified to provide. . . . Additionally, [the petitioner] is only now learning that [REDACTED] also submitted documentation in her case of which she was unaware, and to which she did not consent.

\* \* \*

As discussed at length in the attached declaration of [the petitioner] (please see Exhibit A), [the petitioner] had a friendly personal relationship with [REDACTED] for many years before he offered to employ her and file an application for her to receive permanent residency in the U.S. in the fall of 2010.

The contents of the application he filed with USCIS are unknown to [the petitioner]. She did not have the opportunity to review or approve the petition. She only signed the signature pages presented to her. . . . She was not given any information about the reason for the denial. Please kindly note that all correspondence from the USCIS was sent to: [REDACTED] This address matched [REDACTED] address.

Counsel asserts that the contents of the petition "filed with USCIS are unknown to [the petitioner]." In addition, the signed declaration submitted by the petitioner alleges that the preparer, [REDACTED] "did not show me or explain what specific documents he prepared and filed with the immigration service." Regardless, the petitioner signed the Form I-140 petition November 1, 2010, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. See section 287(b) of the Act, 8 U.S.C. § 1357(b). The regulation at 8 C.F.R. § 103.2(a)(2) provides that "[b]y signing the benefit request, the applicant

or petitioner . . . certifies under penalty of perjury that the benefit request, *and all evidence submitted with it, either at the time of filing or thereafter*, is true and correct.” (Emphasis added). The actual signature portion of the Form I-140 at part 8 requires the petitioner to make the following affirmation: “I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” On that basis alone, the petitioner must be held responsible for any material misrepresentations contained within the record of proceeding. The petitioner cannot at the appellate stage of these proceedings simply disavow knowledge of the problematic documentation while at the same time maintaining that the remaining documentation in the record which is “unknown” to her supports a finding of eligibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

If the petitioner was unaware of the documents and information submitted in support of her own petition, then this failure to apprise herself constitutes deliberate avoidance and does not absolve her of responsibility for the content of his petition or the materials submitted in support. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11<sup>th</sup> Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993). To find otherwise would have serious negative consequences for U.S. Citizenship and Immigration Services (USCIS) and the administration of the nation’s immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

In addition, the Department of Justice and USCIS frequently prosecute employment-based fraud based on a petitioner’s forged signature on the employment-based petition. The AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms for which the alien or employer had no knowledge. *United States v. O’Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002). In contrast to those cases, the petitioner does not contest that she signed the Form I-140, and her initial contact with [REDACTED] [REDACTED] for instance, indicates that she was an active participant in the preparation of the supporting documentation. For example, the record includes multiple photographs of the petitioner holding awards received by [REDACTED]

Furthermore, even after retaining present counsel and filing the appeal, the petitioner has continued to submit questionable documents. For instance, the petitioner submitted the aforementioned [REDACTED] listing specific dates and amounts for which the petitioner would be paid (Exhibit B accompanying

counsel's appellate brief). The petitioner's appellate submission at Exhibit B also includes a letter from the [REDACTED] that lists the petitioner's "Compensation" and "Date Paid" for the "Occasional record," [REDACTED] "108 minutes," and "Start with yourself" project agreements. Counsel describes this letter stating: "A summary of the agreements is also being submitted which details *payments made* to [the petitioner] by [REDACTED] under these agreements. This document shows that *in 2009 [the petitioner] earned \$159,000, in 2010 she earned, \$301,000 . . .*" [Emphasis added.] The letter from the [REDACTED] states that the petitioner received compensation for "Occasional record" in the amount of \$105,000.00 and lists a "Date Paid" as March 1, 2009. Similarly, the letter states that the petitioner received compensation for [REDACTED] in the amount of \$253,000.00 and lists a "Date Paid" as April 29, 2011. The dates and amounts in the letter from the [REDACTED] correspond to the information in the [REDACTED] project agreements. However, despite the AAO's specific request for bank statements from 2009 – 2011 showing the petitioner's receipt of the preceding payments, she failed to submit documentary evidence demonstrating that she received the compensation in accordance with the dates and amounts specified in Section 4.1 of the [REDACTED] project agreements and in the letter from the [REDACTED]

As previously discussed, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. The AAO finds it particularly noteworthy that the petitioner failed to submit evidence of bank transactions documenting the compensation she allegedly received for her two most lucrative project agreements.

With regard to the remaining agreements for [REDACTED] and "Start with yourself," the petitioner submitted her Citigold bank statements (checking and savings transactions) from August 2010 – October 2011. The petitioner circled in pencil various transactions on the bank statements and notated the transactions as compensation from "Deadlock joy," "108 minutes," or "Start with yourself." The transaction dates and bank descriptions follow:

Transactions marked by the petitioner as compensation for "Deadlock joy"

1. 8/27/10 "Deposit" \$3,500.00;
2. 9/8/10 "Incoming Wire Transfer FUNDS TRANSFER" \$3,000.00;
3. 9/30/10 "Incoming Wire Transfer FUNDS TRANSFER" \$9,000.00;
4. 9/30/10 "*Transfer from Savings*" \$9,000.00;
5. 10/12/10 "Incoming Wire Transfer FUNDS TRANSFER" \$9,000.00;
6. 11/26/10 "Incoming Wire Transfer FUNDS TRANSFER" \$1,500.00;
7. 12/13/10 "Incoming Wire Transfer FUNDS TRANSFER" \$10,000.00; and
8. 5/2/11 "*Transfer from Savings*" \$18,000.00.

Transactions marked by the petitioner as compensation for "108 minutes"

1. 10/14/10 "*Transfer from Savings*" \$10,000.00;
2. 10/26/10 "*Transfer from Savings*" \$2,000.00;
3. 10/26/10 "Incoming Wire Transfer FUNDS TRANSFER" \$3,000.00;
4. 11/12/10 "Incoming Wire Transfer FUNDS TRANSFER" \$900.00;
5. 11/23/10 "Other Credit" \$1,050.00;
6. 11/26/10 "*Transfer from Savings*" \$600.00;
7. 11/29/10 "*Transfer on 11/28 from Savings*" \$700.00; and
8. 8/2/11 "Incoming Wire Transfer FUNDS TRANSFER" \$3,000.00.

Transactions marked by the petitioner as compensation for "Start with yourself"

1. 3/3/11 "Deposit Teller" \$2,400.00;
2. 3/10/11 "Deposit Teller" \$2,200.00;
3. 3/31/11 "Deposit Teller" \$2,000.00;
4. 4/6/11 "Deposit Teller" \$1,000.00;
5. 4/18/11 "Incoming Wire Transfer FUNDS TRANSFER" \$1,000.00;
6. 6/6/11 "*Transfer from Savings*" \$500.00;
7. 6/7/11 "Deposit Teller" \$3,000.00;
8. 6/29/11 "Deposit Teller" \$2,000.00;
9. 8/15/11 "Incoming Wire Transfer FUNDS TRANSFER" \$400.00; and
10. 8/22/11 "Incoming Wire Transfer FUNDS TRANSFER" \$1,500.00.

[Emphasis added.]

With regard to the above bank transactions identified by the petitioner, the AAO cannot conclude that the multiple "Transfer from Savings" transactions constitute compensation paid to the petitioner. Instead, the "Transfer from Savings" transactions reflect instances where the petitioner transferred money directly from her Citigold savings account to her Citigold checking account. The petitioner's attempt to claim the "Transfer from Savings" transactions as compensation for working on the aforementioned projects is disingenuous. Moreover, the payment source of the incoming wire transfers, the bank teller deposits, and the "Other Credit" is not specifically identified.

The "AGREEMENT on managing a film making process titled [REDACTED] (dated March 4, 2009) identifies the petitioner as "Executive Producer" and states in Section 4.1 that "the Customer shall pay the Executive Producer USD 9 000.00 (nine thousand dollars) monthly during the whole film production period, that is 6 (six) months. A total remuneration amount is USD 54 000.00 (fifty four thousand dollars). The final payment date is 11.09.2009 [September 9, 2009]." Excluding the "Transfer from Savings" transactions, the petitioner's total compensation for "Deadlock joy" amounts to only \$27,000.00. Further, the dates and the amounts of the bank transactions submitted by the petitioner do not conform to the payment terms set forth in the project agreement.

The "AGREEMENT on managing a film making process titled '108 minutes'" (dated October 1, 2009) identifies the petitioner as "Executive Producer" and states in Section 4.1 that "the Customer shall pay the Executive Producer USD 8 000.00 (eight thousand dollars) monthly during the whole film production period, that is 4 (four) months. A total remuneration amount is USD 32 000.00

(thirty two thousand dollars). The final payment date is 22.02.2010 [February 22, 2010].” Excluding the “Transfer from Savings” transactions, the petitioner’s total compensation for “108 minutes” amounts to only \$7,950.00. Further, the dates and the amounts of the bank transactions submitted by the petitioner do not conform to the payment terms set forth in the project agreement.

The “AGREEMENT on managing a film making process titled ‘Start with yourself’” (dated March 1, 2010) identifies the petitioner as “Executive Producer” and states in Section 4.1 that “the Customer shall pay the Executive Producer USD 8 000.00 (eight thousand dollars) monthly during the whole film production period, that is 2 (two) months. A total remuneration amount is USD 16 000.00 (sixteen thousand dollars). The final payment date is 30.05.2010 [May 30, 2010].” Excluding the “Transfer from Savings” transactions, the petitioner’s total compensation for “Start with yourself” amounts to only \$15,500.00. Further, the dates and the amounts of the bank transactions submitted by the petitioner do not conform to the payment terms set forth in the project agreement.

With regard to the aforementioned discrepancies noted by the AAO, as previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The remaining documentation and the director’s bases of denial will be discussed below. The AAO notes that the petitioner’s failure to submit independent and objective evidence to overcome the derogatory information discussed above seriously compromises the credibility of the petitioner and the remaining documentation. As previously noted, doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Regardless, the AAO will address the director’s finding that the petitioner has failed to demonstrate that she meets at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will uphold the director’s decision.

## 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.

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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 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.<sup>2</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that 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 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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<sup>2</sup> 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).

## II. ANALYSIS

### A. Evidentiary Criteria<sup>3</sup>

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

The director discussed the specific evidence submitted for this regulatory criterion and found that the petitioner had failed to establish her eligibility. In the appellate brief dated September 30, 2011, counsel states: “While [the petitioner] believes she meets this criterion and submitted sufficient evidence therefore, she is not able at this time to obtain the necessary evidence to overcome the objections raised by USCIS.” Counsel’s statement acknowledges that the petitioner is not able to overcome the director’s findings for this criterion. Further, counsel fails to identify any erroneous conclusion of law or fact in the director’s analysis. The director has already addressed the petitioner’s previous claims in detail. While the appellate brief expresses the petitioner’s general disagreement with the director’s determination, it does not point to any specific error in the director’s analysis for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i) and offers no directed argument to focus the AAO on a particular area for review. Given the absence of a specific discussion regarding the issue contested, the AAO considers this issue to be abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). Furthermore, a passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11<sup>th</sup> Cir. 2009). Accordingly, the petitioner has not established that she meets this regulatory 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.*

The director discussed the evidence submitted for this criterion and found that the petitioner had failed to establish her eligibility. The director found that the petitioner’s memberships in the Academy of Television Arts and Sciences (New York), the Producers Guild of America, Film Independent, the American Film Institute, and the Academy of Canadian Cinema and Television had not been shown to require outstanding achievements of their members, as judged by recognized national or international experts. In the appellate brief dated September 30, 2011, counsel states: “While [the petitioner] believes she meets this criterion and submitted sufficient evidence therefore, she is not able at this time to obtain the necessary evidence to overcome the objections raised by USCIS.” Counsel’s statement acknowledges that the petitioner is not able to overcome the director’s findings for this criterion. Further, counsel fails to identify any erroneous conclusion of law or fact in the director’s analysis. The director has already addressed

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<sup>3</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

the petitioner's previous claims in detail. While the appellate brief expresses the petitioner's general disagreement with the director's determination, it does point to any specific error in the director's analysis for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii) and offers no directed argument to focus the AAO on a particular area for review. Given the absence of a specific discussion regarding the issue contested, the AAO considers the petitioner's aforementioned membership claims to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Furthermore, a passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435.

In response to the AAO's October 1, 2012 notice of derogatory information, the petitioner asserts that her membership in the Association of Producers of Ukraine (APU) meets the eligibility requirements for this regulatory criterion. The petitioner submits a letter from the APU dated 01.11.2010 stating that she joined the association in 2009. The petitioner also submits for the first time in these proceedings a copy of the APU's bylaws in the Ukrainian language. The November 8, 2011 English language translation accompanying the APU's bylaws was not certified by the translator as required by the regulation at 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. *Id.* The AAO notes that the petitioner did not claim eligibility based on her APU membership at the time of filing the petition or in response to the director's request for evidence. With regard to the APU bylaws now submitted by the petitioner more than a year after filing the appeal, the AAO notes that the director requested evidence pertaining to the petitioner's memberships on November 12, 2010. As the petitioner had the opportunity to submit her APU membership documentation in response to the director's request for evidence, the AAO will not accept not accept the APU bylaws offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that her membership in the APU meets the elements of this regulatory criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's

membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts. None of the other memberships submitted earlier by the petitioner meets these requirements.

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

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The petitioner submitted documentation indicating that *Oy Vey! My Son is Gay* was screened at various film festivals. On motion, the director found that the preceding documentation was sufficient to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The submitted evidence, however, does not indicate the specific artistic aspects of the petitioner's original work as a producer that were on display. Further, as previously discussed in the AAO's October 1, 2012 notice of derogatory information, the Internet Movie Database, a comprehensive online database of information related to films, does not list the petitioner in the "full cast and crew" credits as having even produced the film. See <http://www.imdb.com/title/tt1223082/fullcredits#cast>, accessed on September 13, 2012, copy incorporated into the record of proceeding. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Despite the AAO's request for evidence, the petitioner failed to submit the motion picture DVD for *Oy Vey! My Son is Gay* showing that her name was listed as a producer in the film's credits. Instead, the petitioner submits a signed declaration stating:

USCIS . . . states that there was evidence submitted showing that I was a credited producer and executive producer on [REDACTED] was the writer & producer of that film, and production had already started when he contacted me in the Ukraine in 2009 and asked me to join the production. He told me that if I helped to raise money to complete the film, which is one of the functions of a producer, that I would receive an "Executive Producer" credit on the film. I fulfilled my obligation and raised the funds from investors in the Ukraine. However, to my knowledge, [REDACTED] never followed through on his promise to give me the credit. It does not appear on the DVD. I figured it was just an oversight on his part.

The petitioner's statement indicates that she "helped to raise money to complete the film," but her statement does not explain how she contributed artistically to the production or specify what part of her work was on display. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." Raising funds from investors in the Ukraine does not satisfy the regulatory requirements set forth at 8 C.F.R. § 204.5(h)(3)(vii). The AAO notes that the ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-

820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The petitioner submitted letters of support and other documents indicating that she served as a producer for the motion picture [REDACTED]. On motion, the director found that the preceding documentation was sufficient to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The plain language of this regulatory criterion, however, requires "[e]vidence that the alien has performed in a leading or critical role *for organizations or establishments* that have a distinguished reputation" (emphasis added). The petitioner has failed to demonstrate how a motion picture film equates to an "organization" or "establishment." Regardless, as previously discussed, the Internet Movie Database does not list the petitioner in the "full cast and crew" credits as having even produced the film. See <http://www.imdb.com/title/tt1223082/fullcredits#cast>, accessed on September 13, 2012, copy incorporated into the record of proceeding. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Despite the AAO's request for evidence, the petitioner failed to submit the motion picture DVD for *Oy Vey!* [REDACTED] showing that her name was listed as a producer in the film's credits. The petitioner states that she "helped to raise money to complete the film," but there is no evidence demonstrating that her role was leading or critical relative to that of the *fifteen other producers* who worked on the film and who were actually identified in the film's credits. The documentation submitted by the petitioner does not establish that she was responsible for the preceding film's success or standing to a degree consistent with the meaning of "leading or critical role." Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Without evidence demonstrating that she has performed in a leading or critical role for at least two distinguished organizations or establishments, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

On appeal, counsel asserts that the petitioner's various project agreements with [REDACTED] meet this regulatory criterion. Counsel also points to the letter from the [REDACTED]

[REDACTED] that lists the petitioner's "Compensation" and "Date Paid" for the "Occasional record," [REDACTED] "Peace atom," and "Start with yourself" agreements. Counsel states: "A summary of the agreements is also being submitted which details payments made to [the petitioner] by [REDACTED] under these agreements. This document shows that in 2009 [the petitioner] earned \$159,000, in 2010 she earned, \$301,000, and in 2011 she has so far earned \$15,000." Despite the AAO's request for bank statements from 2009 – 2011 showing the petitioner's actual receipt of the preceding payments, she failed to submit documentary evidence demonstrating that she received the compensation in accordance with the dates and amounts specified in Section 4.1 of the [REDACTED] agreements and in the letter from the [REDACTED] cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

With regard to the project agreements for [REDACTED] and [REDACTED] the petitioner submitted her Citigold checking and savings account statements from August 2010 – October 2011. The petitioner circled in pencil various transactions on the bank statements and notated the transactions as compensation from [REDACTED] or [REDACTED]. With regard to the bank transactions identified by the petitioner, the AAO cannot conclude that the multiple "Transfer from Savings" transactions constitute compensation paid to the petitioner. Instead, the "Transfer from Savings" transactions reflect instances where the petitioner transferred money directly from her Citigold savings account to her Citigold checking account. In addition, the payment source of the incoming wire transfers, the bank teller deposits, and the "Other Credit" is not specifically identified. Moreover, the dates and the amounts of the bank transactions identified by the petitioner do not conform to the payment information specified in Section 4.1 of the [REDACTED] agreements and the letter from the [REDACTED]. As previously discussed, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

The petitioner's appellate submission includes an August 29, 2011 letter from [REDACTED] listing the "average rate of salary of the staff member on the bases of economic activity category 'Real estate transactions, lease engineering, producing activity and rendering of services to entrepreneurs' within [Kiev] for the period from January till July 2011." The English language translation accompanying the preceding letter was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner must submit evidence of objective earnings data showing that she has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Average salary data for the occupational categories specified

in the preceding letter from the [REDACTED] do not constitute appropriate bases for comparison with the petitioner's film and television production work. The petitioner also submits 2008 median annual wage data for producers from the Department of Labor's *Occupational Outlook Handbook*. The 2008 median annual wage data for producers do not present a timely basis for comparison in demonstrating that the petitioner's 2009 – 2011 alleged compensation constitutes significantly high remuneration. Moreover, the petitioner must submit evidence showing that she has earned a *high* salary or other *significantly high* remuneration in relation to others in her particular field, not simply remuneration that is above average for a group of occupations or that places her in the top half of producers in her field.

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

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

On appeal, counsel asserts that the petitioner's various agreements with [REDACTED] meet this regulatory criterion. Counsel also points to the letter from the [REDACTED] that lists the "Project Budget" and the purported "Profit" for the [REDACTED] project agreements.

Counsel states: "All of these projects can be considered commercial successes as their profits far exceeded the budgets spent to create them." The petitioner, however, has not resolved the inconsistencies in the record relating to her [REDACTED] project agreements. As previously discussed, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Regardless, this regulatory criterion focuses on volume of "sales" and "box office receipts" as a measure of the petitioner's commercial success in the performing arts. Therefore, the mere fact that the petitioner may have raised funds for a film or television show that returned a modest profit by industry standards would be insufficient, in and of itself, to meet this regulatory criterion. With regard to the preceding projects, the petitioner has failed to submit documentary evidence of "sales" or "receipts" or some other equivalent quantitative form of measurement showing that she has achieved commercial successes in the performing arts. Further, there is no documentary evidence showing that the commercial success of the aforementioned projects was primarily attributable to the petitioner's specific work.

The petitioner also submits an August 31, 2011 letter from [REDACTED] a former professional basketball player, discussing various projects involving the petitioner. In addition, the petitioner submits an August 25, 2011 letter from [REDACTED] of [REDACTED] discussing the petitioner's involvement with the [REDACTED]. Neither of the preceding letters provides information on the volume of "sales" or "box office receipts" as a measure of the petitioner's commercial successes in the performing arts.

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

## B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

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

On appeal, the petitioner submits an August 31, 2011 letter from [REDACTED] and [REDACTED] stating:

[The petitioner's] professional qualities never stop surprising me. She is so special and talented that one can only wonder where the source of her inspiration lies. [The petitioner] never repeats herself and never uses any standard solutions. She is one of those few people who always work with complete dedication. She always takes into consideration her customers' wishes, but she also adds a special zest to each of her projects, which makes the project quite special and unique.

[The petitioner] is a very sociable person with excellent organizational skills. She organizes the film-making process in such a way that it goes on in a friendly atmosphere and all the goals she sets are reached just in time and in the best way possible. [The petitioner's] leadership skills combined with her humanness and responsiveness make her a favorite with any team.

[The petitioner] is a highest-class professional. I know very few people in the film industry who can be placed at such a high level as she. She has a remarkable, many-sided talent, her incredible erudition and competence let her remain the leading figure in any project, the person who influences all the solutions, both small and large ones. [The petitioner] can definitely be called a filmmaking trailblazer.

Counsel asserts the preceding letter from [REDACTED] should be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The AAO notes that [REDACTED] first name is spelled differently in the first sentence of his letter [REDACTED] and in the closing of the letter [REDACTED]. Further, the text of the preceding letter appears in multiple fonts with different sizes and line spacing. While [REDACTED] expresses admiration for the petitioner's personal attributes, he fails to provide specific examples of the petitioner's objective achievements in the filmmaking industry. Regardless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication 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, as indicated in this decision, the petitioner

submitted evidence that specifically addresses more than half of the categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Counsel does not explain why the regulatory criteria are not readily applicable to the petitioner's occupation. Moreover, counsel fails to explain how the letter of support from [REDACTED] is "comparable" to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

While recommendation letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from references selected by the petitioner. Furthermore, 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 (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 reference letters 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; *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"). Thus, the content of the references' 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 that one would expect of a producer who has sustained national or international acclaim at the very top of her field.

### 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 has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field

of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>4</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; 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).