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



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 25 2012** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on November 16, 2009, 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 as a management consultant. The director determined that the petitioner had not established the 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 petitioner 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 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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 appeal, the petitioner claims that he received a one-time achievement and 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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate his or her 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 following ten categories of evidence.

- (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*, 596 F.3d 1115 (9th 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.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 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)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119.

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 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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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).

II. Translations

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

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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.

On appeal, the petitioner submitted a single certified translation; however it is unclear which documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

Furthermore, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires a "full English language translation." However, the petitioner submitted partial translations for the several of his foreign language documents.

Finally, the record of proceeding reflects that the petitioner submitted several documents without any English language translations, let alone fully certified translations. Because the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

III. Analysis

A. One-Time Achievement

In response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel claimed the petitioner's eligibility for a one-time achievement based on his receipt of the "[redacted]". Specifically, counsel claimed:

In 2006, [the petitioner] received the award of "[redacted]" by The Bizz Awards [redacted]. This award is organized by the World Confederation of Businesses who promotes public interest in the education and recognition of elite managers, leaders and executives in corporations and professional service firms worldwide. Since 2004, [redacted] has been committed to providing the largest elite business network and development tools to firms. Every year [redacted] organizes the [redacted] Awards, an exclusive honor that distinguishes and celebrates proven business excellence.

In addition, the petitioner submitted the front cover for a "Memory Book" from the event, a photograph of a medal reflecting a [redacted] from The [redacted], a certificate reflecting that the petitioner was conferred "[redacted]" [redacted] and photographs from the ceremony. However, in the director's decision, he

determined that the petitioner failed to submit any evidence for a one-time achievement and did not address the petitioner's claim of eligibility. On appeal, the AAO will review the petitioner's documentary evidence to determine if it is sufficient to meet the one-time achievement requirement. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

On appeal, the petitioner submitted screenshots from [REDACTED] and [REDACTED] reflecting that The World Confederation of Business created the [REDACTED] Awards, and the screenshots reflected the mission, vision, and history, as well as the selection criteria for the awards. However, based on a review of the documentary evidence submitted by the petitioner, he failed to establish that his [REDACTED] from The [REDACTED] equates to a one-time achievement pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3). Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See H.R. Rep. 101-723*, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize.

While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. The AAO is not persuaded that [REDACTED] is remotely comparable to such major, internationally recognized awards as the Pulitzer Prize, the Academy Award, or an Olympic Medal. The petitioner failed to submit any independent, objective evidence beyond the self-promotional websites of [REDACTED] to demonstrate that The [REDACTED] Award is a major, internationally recognized award. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The [REDACTED] Award will be further addressed below in the AAO's discussion of a lesser national or international prize or award for excellence pursuant the regulation at 8 C.F.R. § 204.5(h)(3)(i).

B. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 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.

In the director's decision, he determined that the petitioner established eligibility for this criterion based on the petitioner's selection by *Gerente Magazine* as one of the 10 most successful managers in Colombia in [REDACTED] as well as being named as one the 100 most important businessmen in an anniversary edition of the magazine. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities. Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion.

While the petitioner submitted sufficient documentary evidence demonstrating that he was named one of the top managers in Colombia in [REDACTED] by *Gerente Magazine*, the petitioner failed to submit any documentary evidence beyond *Gerente Magazine* to establish that such selections are nationally or internationally *recognized* prizes or awards for excellence in the field. For example, the petitioner submitted letters from [REDACTED], both of whom briefly described why the petitioner was selected and provided a little background information about the publication. However, the petitioner failed to submit any independent, objective evidence to reflect that the selections are nationally or internationally recognized for excellence beyond *Gerente Magazine*. See *Braga v. Poulos*, No. CV 06 5105 SJO (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Regarding the [REDACTED] from [REDACTED] the petitioner submitted sufficient documentary evidence demonstrating that he received the award. However, as previously discussed, the petitioner failed to submit any documentary evidence beyond the self-promotional websites from [REDACTED]. The petitioner failed to submit any independent documentary evidence establishing that [REDACTED] are recognized nationally or internationally for excellence in the field.

Moreover, the record of proceeding reflects that the petitioner submitted certificates from the Public Utility Services Superintendent in Colombia to [REDACTED] "In recognition to Management skills" [REDACTED]. As the plain language of the regulation at 8 C.F.R.

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

§ 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt” of prizes or awards, the AAO cannot conclude that awards that were not specifically presented to the petitioner are tantamount to his receipt of a nationally or internationally recognized awards. It cannot suffice that the petitioner was one member of a large group that earned collective recognition. Furthermore, the petitioner failed to submit any documentary evidence establishing that the certificates are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Merely submitting documentation of the petitioner’s receipt of prizes or awards is insufficient to meet every element of this criterion without documentation demonstrating that the petitioner’s prizes or awards are nationally or internationally recognized for excellence in the field. In the case here, the petitioner failed to establish that his selections from *Gerente Magazine* and award from the [REDACTED] are nationally or internationally recognized for excellence in the field of endeavor. As such, the AAO withdraws the decision of the director for this criterion.

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

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The director determined that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on his membership with the Colombian Association for Industrial and Personal Relations (ACRIP) and his participation with the Harvard Business School Publishing (HBSP). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

Regarding ACRIP, in response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted a single letter from Hernan Valderrama, President of the Board of Directors for ACRIP, who stated that “ACRIP is a trade union and professional organization of deprived right [sic], without profit intention, that groups the companies, public and private, through their workers of human management.” In addition,

indicated the history and mission of ACRIP, as well as indicating that the petitioner was a member of ACRIP from 1987 to 2004. However, failed to indicate that outstanding achievements, as judged by recognized national or international experts in their disciplines or fields, are required for membership with ACRIP. In fact, failed to discuss any membership requirements for ACRIP.

On appeal, the petitioner submitted an uncertified English language translation of a letter from that failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3). Nonetheless, the uncertified translation indicated that the petitioner participated as a member of the national board from and the petitioner “was elected as he was considered as one of the few Professionals of Human Resources that has attained the highest level in terms of knowledge on the subject.” Similar to letter, letter failed to indicate that outstanding achievements, as judged by recognized national or international experts in their disciplines or fields, are required for membership with ACRIP. While briefly described why the petitioner was elected to serve on the national board, there is no indication that outstanding achievements are essential to membership with ACRIP.

Moreover, the petitioner submitted a screenshot from However, the petitioner submitted an uncertified translation of the screenshot that is lengthier than the actual screenshot. Specifically, the screenshot contains six paragraphs with a partial seventh paragraph. In contrast, the uncertified translation reflects 20 paragraphs. Notwithstanding, the uncertified translation provides no evidence of the membership requirements for ACRIP; instead the uncertified translation indicates the background, history, and mission of ACRIP. As the petitioner failed to submit any documentary evidence that reflects the membership requirements for ACRIP, the petitioner failed to demonstrate that outstanding achievements, as judged by recognized national or international experts, are required for membership with ACRIP consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Regarding HBSP, in response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted a single certificate reflecting that the petitioner is an HBSP’s ManagerMentor PLUS. On appeal, the petitioner submitted screenshots from HBSP’s website reflecting promotional material for HBSP’s e-Learning programs, including an uncertified translation of HBSP’s ManagerMentor PLUS program. In addition, the petitioner submitted a business card that listed himself as a “Management Consultant” for HBSP. While the petitioner completed HBSP’s ManagerMentor PLUS program, the documentary evidence fails to reflect any membership requirements for HBSP, so as to establish that outstanding achievements, as judged by recognized national or international experts in their disciplines or fields, are required for membership with HBSP. There is no evidence, for example, of the selection criteria to participate in HBSP’s programs and if the selection is made by recognized national or international experts. The petitioner failed to establish that HBSP meets the elements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

As discussed, the petitioner cannot meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) by simply submitting documentary evidence reflecting his memberships with

associations. It is the petitioner's burden to establish eligibility for every element of this criterion. In this case, the petitioner failed to establish that his memberships with any of the associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. 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 Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

At the initial filing of the petition, the petitioner claimed eligibility for this criterion based on the previously mentioned material from *Gerente Magazine*. Specifically, the petitioner submitted the following documentation:

1. A partial translation of an extract of an article entitled, "[REDACTED]" May 2000, unidentified author;
2. A partial translation of an extract of an article entitled, "Managers of Human Resources," September 2002, unidentified author; and
3. A partial translation of an extract of an article entitled, "Managers of Human Resources," 2003, unidentified author.

As the regulation at 8 C.F.R. § 103.2(b)(3) requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation," the

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.

petitioner's submission of partial translations fail to comply with the regulation at 8 C.F.R. §103.2(b)(3). As such, the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, the petitioner failed to include the author for any of the articles as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Notwithstanding, the petitioner provided translations of portions of the articles that mentioned him. It appears that while the articles mentioned the petitioner, the articles are not primarily about him relating to his work. Instead, the articles are about brief snippets about numerous managers in which the petitioner was mentioned as one of them along with 10 or 100 others. Furthermore, the petitioner failed to submit any independent, objective evidence establishing that *Gerente Magazine* is a professional or major trade publication or other major media. See *Braga v. Poulos*, No. CV 06 5105 SJO (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

On appeal, the petitioner claims eligibility for this criterion based on the posting of his work on the website, [REDACTED]. Specifically, the petitioner stated that "[a]ll of [his] submitted writings, workshops or conferences are edited and published in the internet portal [REDACTED] and submitted uncertified translations of screenshots from the website. In addition, the petitioner submitted an uncertified translation of a letter from [REDACTED] who stated that the petitioner "has a strategic alliance with gestionhumana.com through his company Outsourcing Corporate Management 2000, and that his conferences, articles and interviews are available to our subscribers."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work in the field for which classification is sought. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. Material authored by the petitioner is not published material about the petitioner relating to his work. Regardless, the petitioner failed to include the title and date for any of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), as well as evidence establishing that the website is a professional or major trade publication or other major media. The AAO notes that the petitioner submitted several articles that were posted on the Internet. The AAO is not persuaded that postings on the Internet from a printed publication or from an organization are automatically considered major media. The petitioner failed to submit independent, objective evidence establishing that the website is considered major media. In today's world, many organizations, businesses, and resources, regardless of size and distribution, post on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In this case, the petitioner's documentary evidence fails to reflect published material about him relating to his work in professional or major trade publications or other major media.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” A review of the record of proceeding reflects that the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO withdraws the findings of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

A review of the record of proceeding fails to reflect that the petitioner claimed eligibility for this criterion either at the initial filing of the petition or in response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). However, on appeal, the petitioner is now claiming eligibility for this criterion. As such, the director could not have erred in his decision as the petitioner is only claiming eligibility for this criterion for the first time on appeal.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Here, the evidence must be reviewed to see whether it rises to the level of original business-related contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner claims:

My business relation contribution, with personal authorship constitutes a method or academic model with a high degree of technical development and management that drives organizations to excellence. Results in the improvement in process and workers safety, improve productivity of the organization by reducing costs, improving customer service with added values and generating huge profits for organizations, quality of management in all areas of the company and all its

processes, improved identity and corporate image and excellence in the welfare and development of company employees.

* * *

With the purpose of providing evidence of the business model of my authorship I annex the Power Point format postulate model for the "Contractor Management Model" as academic, business related contribution.

The petitioner submitted a screenshot that he claimed was a "Power Point presentation snapshot of the 'Contractor Management Model for Strategic Alignment,'" however the petitioner failed to submit an English language translation, let alone a certified English language translation as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). As such, the petitioner failed to support his assertions on appeal. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the petitioner submitted an uncertified translation of a letter from [REDACTED] who stated:

During [the petitioner's] time of service for [REDACTED], he contributed with his knowledge, skills and abilities in the area of Human Resources Management. He led the cultural transformation processes and participated, along with the executive team, in the Union related situation mitigation through the modification to the labor contract agreement with the Unions.

Likewise, [the petitioner] designed a model of strategic alignment (Contractor Management Model) with the objective of improving [REDACTED] contractor service provider's quality standards and prevent labor liabilities which were taken to the company's headquarters in United States, Argentina, Peru, Venezuela, Ecuador, Panama and Spain, allowing great investments in benefit of our client.

[REDACTED] letter only indicates the petitioner's contributions to [REDACTED] rather than to the field as a whole. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contributions be "of major significance *in the field* [emphasis added]," the submission of a single letter that briefly reflects the petitioner's contributions to a sole company is insufficient to meet all of the elements for this criterion. Regardless, [REDACTED] letter fails to indicate the impact or influence of the petitioner's work at [REDACTED] beyond simply indicating the petitioner's participation and involvement in projects with the company. For example, [REDACTED] stated that the petitioner "led the cultural transformation process" and "designed a model of strategic alignment" but failed to explain the significance of these projects to [REDACTED] let alone to the

field as a whole. Moreover, while [REDACTED] indicated that the petitioner contributed with his “knowledge, skills and abilities,” assuming that they are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm’r 1998).

Although [REDACTED] letter claims that that the petitioner made contributions to [REDACTED] it fails to indicate that those contributions have been of major significance in the field. The letter provides only general statements without offering any specific information to establish how the petitioner’s work has been of major significance in the field. The lack of specific information fails to provide a basis for determining that the petitioner’s contributions have been of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added].” Without additional, specific evidence showing that the petitioner’s work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion.

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

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

At the initial filing of the petition or in response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner did not specifically claim eligibility for this criterion. However, in the director’s decision, he determined that the petitioner’s submission of an unpublished book failed to establish eligibility for this criterion. On appeal, the petitioner claims eligibility for this criterion based on the previously discussed uncertified translations from www.gestionhumana.com, as well as his claim of “[p]ublication for the MBA of the Externado University of Colombia.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the uncertified translations from www.gestionhumana.com do not contain the characteristics of scholarly articles as there is no evidence demonstrating that the screenshots were peer-reviewed, contain any references to sources, or were otherwise considered “scholarly.” In fact, the uncertified translations of the screenshots refer to the petitioner in the third person and appear to summarize the petitioner’s work. Clearly, the screenshots are not “scholarly articles” consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Furthermore, for the reasons already discussed under the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner failed to demonstrate that www.gestionhumana.com is a professional or major trade publication or other major media.

Regarding the petitioner's MBA thesis, the petitioner submitted uncertified translations of the cover page and table of contents. Without a full and certified translation, the petitioner failed to establish that his documentary evidence reflects a scholarly article. Moreover, the petitioner failed to submit any documentary evidence establishing that it was published in a professional or major trade publication or other major media.

Regarding the director's reference to the petitioner's book, the petitioner submitted a copy of his book entitled, [REDACTED]. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "scholarly *articles* [emphasis added]," the submission of the petitioner's *book* does not equate to an article. An article is "a nonfictional prose composition usually forming an independent part of a publication (as a magazine)."⁴ On the other hand, a book is "a long written or printed literary composition."⁵ Furthermore, the regulation requires that the articles be "in professional or major trade publications or other major media." As books may be published independently or self-published, mere publication does not establish that a book is a professional or major trade publication or other major media. As there is no evidence demonstrating that the petitioner's book was peer-reviewed, contained any references to sources, or was otherwise considered "scholarly," the petitioner's authorship of a book is insufficient to meet this criterion. Even if the petitioner's book equates to a scholarly article, which it clearly does not, the petitioner failed to submit any documentary evidence to establish that his book was even published, let alone that it was published in a professional or major trade publication or other major media.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The documentary evidence submitted by the petitioner fails to reflect that he has authored scholarly articles in his field in professional or major trade publications or other major media consistent with the plain language of the regulation.

Accordingly, the petitioner failed to establish 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.

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires

⁴ See <http://www.merriam-webster.com/dictionary/article>, accessed on January 17, 2012, and incorporated into the record of proceeding.

⁵ See <http://www.merriam-webster.com/dictionary/book?show=0&t=1311785044>, accessed on January 17, 2012, and incorporated into the record of proceeding.

“[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

At the initial filing of the petition, counsel claimed:

During 27 years, [the petitioner] has had the opportunity to perform a lead role in the area of Human Resources for different companies with distinguished reputation[s]. As shown in [the petitioner’s] resume he has worked for highly recognized companies such as [REDACTED]

[REDACTED] among others. On all these companies, [the petitioner] has performed a lead role participating in the development of new systems and strategies in the area of Human Resources.

At that time, the petitioner submitted several recommendation letters that generally praised the petitioner for his work but failed to demonstrate that he performed in a leading or critical role. For example, [REDACTED] stated that the petitioner “participated in an outstanding manner in the strategy and development of human resources management of the company.” [REDACTED] stated that the petitioner “demonstrated a high level of responsibility and integrity in the performance of his job.” [REDACTED] stated that the petitioner “has taught new concepts, systems, and a[n] integral concept in strategic planning on the human resources.” While the letters reflected that he worked for [REDACTED] and were satisfied with the petitioner’s work, they failed to reflect that the petitioner’s roles were leading or critical to the respective organizations as a whole. The petitioner failed to submit evidence showing his position in relation to that of the other employees of the organization. There is no evidence demonstrating how the petitioner’s roles differentiated him from the other workers. Without evidence establishing that the petitioner performed in a leading or critical role, it is insufficient to simply submit letters praising the petitioner for his work ethic as evidence of his eligibility for this criterion. It is noted that while counsel referred to the petitioner’s résumé there is no documentary evidence regarding the petitioner’s employment with [REDACTED]

[REDACTED] among others.” It is insufficient to base the petitioner’s eligibility on his self-serving job résumé. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

On appeal, the petitioner did not contest the decision of the director based on the previously submitted and discussed documentation. Instead, the petitioner claims eligibility for this criterion based on his role with the [REDACTED]. Specifically, the petitioner claimed:

Executive representatives of the 500.000 best companies in Colombia elected me, [the petitioner], in several ocatons [sic] (2002) to be a Board Member, and later its [redacted] among the four (4) executives and four (4) CAFAM . . . workers, to safeguard the communities' interest in the largest Colombian [CAFAM].

* * *

The role I played as the [redacted] of the Board of Directors in CAFAM . . . – largest one in Colombia-, is an example of my social leadership capabilities all while performing in a business oriented highly reputable position in [redacted]

As evidence of his claims, the petitioner submitted photographs of him purportedly speaking and participating at various engagements. In addition, the petitioner submitted screenshots from several websites without any English language translations, let alone certified English language translations. The petitioner failed to submit any other documentary evidence regarding his role with [redacted]. In fact, the photographs and foreign language documents fail to reflect that he served as a member or president of [redacted] board of directors, and the petitioner failed to demonstrate that he performed in a leading or critical role for [redacted]. The documentary evidence submitted by the petitioner fails to support his claim that his role was leading or critical for [redacted]. Moreover, the petitioner failed to demonstrate that [redacted] is an organization or establishment that has a distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

Accordingly, the petitioner failed to establish 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.

The director determined that the petitioner failed to establish eligibility for this criterion. In the petitioner’s brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner failed to establish eligibility for this criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this criterion. In the petitioner's brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, 2011 WL 4711885 at *9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1115. The petitioner met the plain language of one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the AAO's final merits determination, the AAO must look at the totality of the evidence to determine the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has been recognized by *Gerente Magazine* and at the [REDACTED] Awards, was a member of ACRIP and participates with HBSP, and has been employed in human resources with [REDACTED]. However, the personal accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the

extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

While the AAO determined that the petitioner met the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11. The petitioner demonstrated his eligibility based on the submission of certificates reflecting his participation as an evaluator for [REDACTED]. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. The petitioner's participation as an evaluator at least 12 years prior to the filing of the petition is not demonstrative of sustained national or international acclaim. Furthermore, without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, the AAO cannot conclude that the petitioner is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

The AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Again, the petitioner submitted uncertified and partial translations, as well as foreign language documents without any English language translations, that do not comply with the regulation at 8 C.F.R. § 103.2(b)(3). In addition, although the petitioner submitted several recommendation letters, USCIS may, in its discretion, use as advisory opinion 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 letters of support from the petitioner's personal contacts 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. at 500 n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence. Moreover, the petitioner submitted self-promotional material rather than independent, objective evidence. Similarly, the record of proceeding contains numerous assertions by the petitioner without any supporting documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The AAO is not persuaded that such evidence equates to

“extensive documentation” and is demonstrative of this highly restrictive classification. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r 1989).

The evidence of record falls short of demonstrating the petitioner’s sustained national or international acclaim as a management consultant. The regulation at 8 C.F.R. § 204.5(h)(3) requires “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise.” While the petitioner submitted documentation demonstrating that he has been recognized by a publication and has worked in human resources, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994); 56 Fed. Reg. at 60899. In *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of [redacted] ability with that of all the hockey players at all levels of play; but rather, [redacted] ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Likewise, it does not follow that the petitioner who has not offered any evidence that distinguishes him from others in his field, should necessarily qualify for approval of an extraordinary ability employment-based visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was among that small percentage at the very top of the field of endeavor.

IV. 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 to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.