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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**



B2

DATE: JUL 11 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 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on March 15, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on April 14, 2011. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). On March 15, 2011, the director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. See section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that 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)-(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, counsel submits a brief, but no additional evidence. In his brief, counsel asserts that the petitioner meets the membership in associations which require outstanding achievements criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the leading or critical role for organizations or establishments that have a distinguished reputation criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary or other significantly high remuneration for services criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

For the reasons discussed below, the AAO finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has not shown evidence of a one-time achievement that is a major, internationally recognized award, under the regulation at 8 C.F.R. § 204.5(h)(3), or satisfied at least three of the ten regulatory criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the AAO finds that the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

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.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO’s decision to deny the petition, the court took issue with the AAO’s evaluation of the evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Kazarian*, 596 F.3d at 1121-22.

The court stated that 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

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 (vi).

to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 case, based on the evidence in the record, the AAO finds that the petitioner has not submitted qualifying evidence showing a one-time achievement that is a major, internationally recognized award, or satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). In short, the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, as the petitioner has not shown through his evidence the receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for the petitioner to meet the basic eligibility requirements for the petition.

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

On appeal, counsel asserts that the petitioner meets this criterion because the petitioner “is currently on the Board of Directors for the [REDACTED]” and is the [REDACTED] of the rotary club, “not just a mere member.” The petitioner’s supporting documents include: (1) an unsigned [REDACTED] certificate of membership, dated April 19, 2010, (2) the July 21, 2010 minutes of the rotary club’s monthly board meeting, showing that the petitioner, as the [REDACTED], is one of the board members, (3) a July 17, 2010 online article from asianjournal.com, entitled “[REDACTED]” (4) a July 2010 Rotary Club newsletter, (5) copies of photographs of the petitioner and unnamed individuals, (6) an August 5, 2010 letter from [REDACTED] of the rotary club, (7) an August 4, 2010 online printout from rotary.org, relating to the guiding principles of a rotary club, and (8) an August 5, 2010 printout from wikipedia.com, entitled “Rotary International.”

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

Based on the evidence in the record, the AAO finds that the petitioner has not shown that his membership in the [REDACTED] constitutes membership in an association that requires outstanding achievements. First, the petitioner has not provided any evidence, such as membership requirements or bylaws, indicating what qualifications, if any, an applicant must meet to become a member of the organization.

Second, had the petitioner provided documents showing the organization's membership requirements or qualifications, he must also establish that these requirements and qualifications include outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. The petitioner has failed to provide any such evidence.

Third, the petitioner has not established through objective evidence that he is a member of the organization. Specially, the April 2010 certificate of membership is unsigned. As such, the AAO cannot give this facially deficient document any evidential weight. Although the petitioner's other evidence indicates that he – as the [REDACTED] – is a board member of the rotary club, the evidence does not establish that a board member of a rotary club must be a member of an association. Indeed, the plain language of the criterion requires that the petitioner be a member of an association, not a board member of a rotary club.

Fourth, the plain language of the criterion requires evidence of membership in associations, in the plural, that require outstanding achievements of their members. This is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that the petitioner's involvement in the rotary club constitutes a single example of his membership in an association that requires outstanding achievements of its members, the AAO would not conclude that the petitioner has met this criterion, as he has not shown membership in a second such association.

Finally, as noted in the director's March 15, 2011 decision, the petitioner has submitted evidence relating to his membership in other organizations, including the [REDACTED]. On appeal, however, counsel has not continued to assert that the petitioner's memberships in these organizations meet this criterion. As such, the AAO concludes that the petitioner has abandoned the issue relating to membership in these organizations, as he did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, counsel asserts that the petitioner meets this criterion because he has submitted “an article acknowledging his business accomplishments.” The petitioner’s supporting documents include: (1) a copy of an undated article, entitled [REDACTED] published in *Woman*, a weekly magazine in the *Philippine Post*, (2) a copy of the table of contents of *Woman*, listing the article, (3) an August 4, 2010 online printout about Manila Bulletin Publishing Corporation, entitled [REDACTED] (4) an August 4, 2010 online printout about *Manila Standard Today*, and (5) the petitioner’s curriculum vitae, listing a number of articles under “Recognitions.”

Based on the evidence in the record, the AAO finds that the petitioner has not shown that the *Woman* article is published in a professional or major trade publication or other major media. First, as initially noted in the director’s July 12, 2010 notice of intent to deny (NOID), the *Woman* article “cannot be considered a professional or major trade publication, or a publication relating to the alien’s work in the specified field.” Indeed, other than counsel stating that the article is a “mainstream article” in a magazine that “is published every Friday by the *Philippine Media Post*” in his August 9, 2010 response to the director’s NOID, neither counsel nor the petitioner has provided any objective and independent evidence on *Woman*, such as information relating to its reputation, readership or geographic reach. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Second, even if the AAO were to conclude that the *Woman* article is published in a professional or major trade publication or other major media, the AAO would not find that the petitioner has met this criterion. The plain language of the criterion requires evidence of qualifying published material in professional or major trade publications, in the plural, or other major media. This is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to find that the petitioner has presented a single example of a qualifying published material, the AAO nonetheless would find that the evidence lacks a second such example.

Third, although in his August 9, 2010 response to the director’s NOID, counsel asserted that the petitioner meets this criterion based on articles published in *Entrepreneur Magazine*, *Manila Standard Newspaper* and *Manila Bulletin*, counsel has not presented any evidence establishing the publication of these articles. Indeed, counsel acknowledged that “due to the passing of time, [the petitioner] has lost all copies of [the articles].” The petitioner’s curriculum vitae, listing a number of articles that allegedly featured him, is self-serving and insufficient to establish the publication of the articles. USCIS need not rely on self-promotional material. See *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The regulation at 8 C.F.R.

§ 103.2(b)(2) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. The same regulation provides the procedure for documenting the non-existence or unavailability for required evidence and the requirements for submitting secondary evidence or affidavits. The petitioner did not comply with that regulation or submit secondary evidence or affidavits.

Finally, notwithstanding counsel's assertions in his August 9, 2010 response to the director's NOID, on appeal counsel has not continued to assert that articles, other than the *Woman* article, meet this criterion. As such, the AAO concludes that the petitioner has abandoned the issue relating to the other articles. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

Although when counsel initially filed the petition on March 11, 2010, he asserted that the petitioner meets this criterion, counsel did not continue this assertion in his August 9, 2010 response to the director's NOID and has similarly failed to do so on appeal. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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

On appeal, counsel asserts that the petitioner meets this criterion because of his "role as [redacted] of many reputable international companies" and "his appointment as [redacted]

[redacted] The petitioner's supporting documents include:

1. the petitioner's curriculum vitae, indicating his role as the president of three United States companies and two Filipino companies;
2. documents relating to a U.S. company named [redacted] including the certificate of incorporation, an Internal Revenue Service letter regarding the company's employer identification number, an online printout describing the company, organizational charts, and a business plan;
3. documents relating to a U.S. company named [redacted] including the articles of incorporation, an Internal Revenue Service form regarding the company's employer identification number, a 2009-2010 business license certificate, and promotional material;

4. documents relating to a U.S. company named [REDACTED], including the articles of incorporation, promotional material, a May 27, 2010 letter from California's Department of Social Services regarding an application for a community care license, and facilities floor plan; and
5. documents relating to a Filipino company named [REDACTED], including a certificate of incorporation, the articles of incorporation, the bylaws, general information sheets, the petitioner's description of his role in the company, 2006-2008 audited financial statements and other tax-related documents, and a November 5, 2005 [REDACTED] [REDACTED] presented to the petitioner and the company.

Based on the evidence in the record, the AAO finds that the petitioner has not shown that he has performed in a leading or critical role for any organization or establishment that has a distinguished reputation. First, although the petitioner has submitted evidence showing that he was or is the president of five companies, he has not submitted evidence that any of these companies constitute organizations or establishments that have a distinguished reputation. Evidence that a company has conducted business – and in the case of [REDACTED], has conducted business with some level of success – is insufficient to show that it is an organization or establishment with a distinguished reputation. Notably, the “about us” section from the New York based [REDACTED] [REDACTED] states only that the company's vision is to be a world class organization and it “would like to be a leader in the field of creating business opportunities.” This language does not suggest the company already enjoys a distinguished reputation. Similarly, while the “Mr. [REDACTED]” article reflects that [REDACTED] operates multiple locations, not every company able to open multiple branches necessarily enjoys a distinguished reputation. The petitioner has submitted no objective and independent evidence, such as articles from a professional or trade publication or reporting from major media, that shows any of the five companies' reputation, let alone a distinguished reputation.

Second, the evidence fails to establish that the petitioner's role as the [REDACTED] or board member constitutes either a leading or critical role for the [REDACTED]. Specifically, although counsel asserted in his August 9, 2010 response to the director's NOID that the petitioner “is critical in coordinating international matters” of the rotary club, there is insufficient evidence in the record showing what the petitioner actually does for the rotary club or the international matters with which the rotary club is involved. Neither the documents relating to the rotary club nor the August 5, 2010 letter from [REDACTED] shed light on the petitioner's duties and obligations in the organization. As such, even if the AAO were to conclude that the rotary club is an organization or establishment that has a distinguished reputation, it would not find that the petitioner has performed a leading or critical role for the organization or establishment.

Finally, even if the AAO were to find that the petitioner has performed a leading or critical role for the rotary club and that the rotary club enjoys a distinguished reputation, it would not find that the petitioner has met this criterion. The plain language of the criterion requires evidence that the petitioner has performed a qualifying role for organizations and establishments, in the plural, that

have a distinguished reputation. This is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, had the AAO found that the petitioner had presented one such example in his role for the rotary club, the AAO would not find that the evidence establishes that he has performed a qualifying role for a second such organization or establishment.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, counsel asserts that the petitioner meets this criterion because the petitioner's income in 2009 was approximately \$96,000. The petitioner's supporting documents include: (1) a 2008 online press release, entitled [REDACTED], (2) the petitioner's tax-related documents for 2009, (3) the petitioner's pay slips from July 2009 to January 2010, (4) an online printout from *Yahoo! Finance*, indicating that the petitioner's 2009 income was equivalent to \$92,434.17, and (5) a May 28, 2007 online article from *The Economic Times*, entitled [REDACTED]

Based on the evidence in the record, the AAO finds that the petitioner has not shown that his salary constitutes a high salary or other significantly high remuneration for services. First, although the petitioner asserts that his 2009 salary was 4,160,000 in Philippine Peso, he has not established the proper value of this amount in U.S. dollars. Specifically, the *Yahoo! Finance* printout relates to the two currencies' exchange rate on August 5, 2010, not 2009, when the petitioner received the salary. Also, the petitioner has not provided any evidence relating to the reliability of the exchange rate reported on *Yahoo! Finance*.

Second, the press release relates to average Filipino family income and does not provide a useful comparison for high salaries in the petitioner's field. The *The Economic Times* article is insufficient to show the average salary in 2009 of others in the petitioner's field. Specifically, the article was published in 2007. As such, the AAO lacks the relevant data for 2009. Moreover, the petitioner has not provided any evidence relating to the reliability of the information reported in the article. Furthermore, the article states that CEOs in the Philippines "receive[d] an average base salary of \$44,496 and \$51,519 in annual cash on average," for a total of \$96,015. This amount is more than the petitioner's salary in 2009.

Third, even if the AAO finds that the article establishes the average salary of a CEO in the Philippines in 2009, the AAO would not find that the petitioner has met this criterion. Specifically, evidence of the average wage in an occupation does not demonstrate what a high wage is in that occupation. Merely documenting wages above the average wage in the occupation is insufficient

evidence under the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary in relation to others in the field.

Accordingly, the AAO finds that the petitioner has not presented evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

B. Summary

The AAO concurs with the director's finding that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting at least three of ten types of evidence required under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) 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," and (2) "that the alien has sustained national or international acclaim and that his or his achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While 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.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting at least three types of evidence. *Kazarian*, 596 F.3d 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.

³ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. Dep't of Justice*, 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* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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.