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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**

[Redacted]

B2

DATE: Office: TEXAS SERVICE CENTER FILE: [Redacted]  
JUL 11 2012

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

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

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

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). Counsel’s initial brief indicated that the petitioner’s extraordinary ability is in the “field of International Travel Logistics and Management,” and in [REDACTED] to the U.S.” The director determined the petitioner had 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 and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner’s priority date established by the petition filing date is March 10, 2011. On March 24, 2011, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued her decision on May 18, 2011. On appeal, the petitioner submits a brief with no new documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

## 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.*; 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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

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

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*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.*

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she is a member of more than one association in her field. Second, the petitioner must demonstrate that the associations require outstanding achievements (in the plural) of their members. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided documentary evidence related to her employment [REDACTED] which consisted of a certificate of completion of the [REDACTED], a congratulatory note dated March 15, 2010, on being the employee of the year, and a letter indicating the petitioner's perfect attendance in March of 2010. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, counsel failed to identify a specific error in fact or error in the application of the law attributable to the director. Counsel merely expresses disagreement with the director's derogatory determination as it related to this criterion. Counsel stated within the appellate brief: "[REDACTED] is one of the premier airlines in the world that only accepts the top talent in the world to serve in high positions such as the Beneficiary's position, which is responsible for the most important markets in the world (Brazil)." Counsel failed to address the director's conclusion that working for [REDACTED] was insufficient evidence to demonstrate the petitioner's membership in an association in accordance with the regulation. The petitioner, through counsel, makes only passing reference to this issue, asserting that the petitioner's employment at [REDACTED] demonstrated the petitioner's eligibility under this criterion. Thus, the petitioner failed to identify an incorrect application of law or statement of fact underlying the director's finding that the petitioner's evidence was insufficient. The AAO, therefore, considers this issue to be abandoned. *Desravines v. U.S. Atty. Gen.*, 343 Fed. Appx. 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

Regardless, the AAO finds that a job with a company is not a membership in an association as required under the plain language of this criterion. In fact, the petitioner also relies on this evidence to meet the leading or critical role for organizations or establishments with a distinguished reputation criterion pursuant to 8 C.F.R. § 204.5(h)(3)(viii). To allow the petitioner to rely on this form of evidence in an

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

attempt to meet multiple criteria would render meaningless the statutory requirement for extensive evidence at section 203(b)(1)(A)(i) of the Act, or the regulatory requirement that a petitioner meet at least three separate criteria at 8 C.F.R. § 204.5(h)(3). This decision addresses the criterion at 8 C.F.R. § 204.5(h)(3)(viii) below.

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

Hence, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner’s contributions (in the plural) to her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner’s work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided letters from travel industry experts. The director determined that the petitioner failed to meet the requirements of this criterion.

Within the appellate brief, counsel restates the content of the letters from industry experts. Although counsel quotes attestations of contributions the petitioner has made to individual companies, he failed to identify any impact the petitioner has had on the travel industry as a whole that can be considered a contribution of major significance. The petitioner, through counsel, makes only passing reference to this issue, asserting that the petitioner's improvement of the performance of individual companies demonstrated the petitioner's eligibility under this criterion. Thus, the petitioner failed to identify an incorrect application of law or statement of fact underlying the director's finding that the petitioner's evidence was insufficient. The AAO, therefore, considers this issue to be abandoned. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435 (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

The petitioner provided two letters accompanied by deficient translations; the letters from [REDACTED] and from [REDACTED]. Additionally, the petitioner provided a letter from the [REDACTED], which does not bear the name of any individual from this company. As this letter does not identify any official from [REDACTED], it carries diminished evidentiary weight.

The letters accompanied by deficient translations are not in accordance with 8 C.F.R. § 103.2(b)(3) as the letters are not "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."

The letter from [REDACTED], stated that the petitioner "is a great specialist in her area on the Brazilian market," and that "she turned the [REDACTED] into the best of all the European airlines on the Latin-American market." These contributions to [REDACTED] fall short of demonstrating the requisite contributions in the field as a whole. The letter from [REDACTED] of a tourism company credited a long-standing relationship between his company and [REDACTED] to the petitioner, and he described the petitioner's abilities in the travel industry. Although [REDACTED] asserts that Brazilian tourism ranks third to the United States, neither his letter nor the record reflect that this ranking or its resulting economic impact is attributable to the petitioner's contributions in her field.

While the remaining evidence referenced the petitioner's abilities and talents within the travel industry, each form of evidence failed to specify an impact the petitioner has had on her field as a whole. Deficient evidence that merely demonstrates an impact at the company level or below is not in accordance with the level of influence as anticipated by the regulation.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered

above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided two letters and two photographs. The director determined that the petitioner failed to meet the requirements of this criterion.

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<sup>3</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on June 26, 2012, a copy of which is incorporated into the record of proceeding.]

The letter from [REDACTED] dated April 19, 2007, merely indicated that the petitioner had perfect attendance for the month of March 2007, and that this attendance record assisted the company in reaching its productivity objectives. The letter from [REDACTED] of the United States affiliate of [REDACTED], expresses gratitude for the petitioner's performance in the aftermath of the [REDACTED] accident in Brazil. The letter recognizes the emotional toll of that work and assures that management is at the petitioner's disposal. [REDACTED] letter does not single out any specific actions of the petitioner that can be construed to constitute a leading or critical role the petitioner might have performed during the aftermath of the accident.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of performing in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya*, Civ. Act. No. 06-2158 (RCL) at \*1, \*12; *Snapnames.com Inc.*, 2006 WL 3491005 at \*1, \*10 (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). In the present case, the petitioner only claimed eligibility under this criterion for a single company, [REDACTED]

The director discussed the evidence submitted pursuant 8 C.F.R. § 204.5(h)(3)(viii) and found that the petitioner failed to establish her eligibility. On appeal, the petitioner, through counsel only makes reference to this issue, asserting that the evidence submitted with the initial petition demonstrated her eligibility under this criterion. The petitioner failed to identify an incorrect application of law or statement of fact underlying the director's determination that the perfect attendance during March of 2007, and her actions after an apparent airline accident, was insufficient. The AAO, therefore, considers this issue to be abandoned. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435 (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

As a result, the petitioner has not submitted evidence that meets the plain language requirements of 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 petitioner provided a letter from [REDACTED] in a foreign language. This letter is accompanied by a deficient translation that is not in accordance with 8 C.F.R. § 103.2(b)(3) as the letter is not

“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.” As such, the director put the petitioner on notice of this deficiency within the RFE; however, the petitioner elected to notify the director that the translations were in compliance with the regulations and chose not to submit revised evidence. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, counsel asserts that the individual who performed the translation is fluent in both French and English and certified the accuracy of the aforementioned translation. However, the regulation requires that any foreign language document be accompanied by a full English translation that the translator has certified as complete and accurate, and that the translator is competent to translate from the foreign language into English. The provided translation merely stated: “Translation from the French language: dated November 23, 2010 by [REDACTED]” This document lacks a certification that the translation is complete and accurate and that the translator is competent to translate from the French language into English.

Moreover, counsel makes no attempt to address the director's accurate conclusion that the petitioner failed to provide evidence that this bonus, assuming it was actually issued, constitutes other significantly high remuneration for services in relation to others in the field as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The AAO concurs that the record contains no evidence that would allow the AAO to compare the petitioner's bonus to other remuneration in her field. The AAO further notes that the director requested such evidence for comparison purposes in the RFE and that counsel's response also failed to address this evidentiary requirement. Thus, even if the petitioner had submitted such evidence on appeal, the AAO would not consider it. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

#### B. Comparable Evidence

On appeal, counsel also asserts that the director erred in concluding that the petitioner had not submitted comparable evidence and references the letters from travel industry experts. The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the alien is able to demonstrate that he or she is unable to qualify for this classification because the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not readily applicable to the alien's occupation. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that the standards at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the petitioner's occupation. In fact, as indicated in this decision, counsel mentioned evidence in the brief and at the time of the initial petition filing that specifically addressed at least four of the ten criteria at the regulation at 8 C.F.R.

§ 204.5(h)(3). Additionally, these letters were considered under the criterion at 8 C.F.R. § 204.5(h)(3)(v). Finally, counsel has not explained how these necessarily subjective opinions are “comparable” to the standards set forth at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet or submit documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As such, no evidence that the petitioner submitted will be considered as comparable evidence.

### C. Summary

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

### III. CONCLUSION

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

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

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

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<sup>4</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.