

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

Bz



DATE: JUL 13 2012

Office: NEBRASKA 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, Nebraska 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 for the beneficiary as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the *Immigration and Nationality Act (the Act)*, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim of the beneficiary 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 on behalf of the beneficiary under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, upon review of the entire record, the AAO upholds the director's conclusion that the petitioner has not established the beneficiary's eligibility for the exclusive 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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 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 on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

---

<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. Prior O-1

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, classification. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts as simply “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “a level of expertise indicating that the individual is on of that small percentage who have risen to the very top of the field of endeavor.” While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o) does not appear in 8 C.F.R. § 204.5(h). As such, the beneficiary’s approval for a non-immigrant visa under the lesser standard of “distinction” is not evidence of her eligibility for the similarly titled immigrant visa.

Moreover, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

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

The petitioner submitted evidence that the beneficiary received two diplomas from the International Trade Exhibition & Fashion Show "Crystal Dress" for Best Collection and the Grand Prize and a diploma from the "Philanthropic Fond [sic] Russian Silhouette," rewarding the petitioner for her participation and indicating that the petitioner was a semi-finalist. While the petitioner and counsel assert that these awards are equivalent to two Emmy awards and a Cleo award respectively, no evidence was submitted to substantiate such claims. 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)). The petitioner also failed to submit alternative evidence that the field, nationally or internationally, recognizes any of the beneficiary's awards. Rather, the petitioner submitted evidence about the organizers of the competition that does not relate to the awards themselves. It remains the petitioner's burden to submit evidence addressing every element of a given criterion, including that a prize or award is nationally or internationally recognized.

In light of the above, the petitioner has not established that the beneficiary meets the plain language requirements of this regulatory criterion.

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

In response to the director's request for evidence, the petitioner submitted a letter from the Designers Union of Armenia, confirming the beneficiary's membership since April 2002. While the letter states vaguely that the union members "are professional and experienced designers...and are highly recognized in Armenia and in the international community," the petitioner failed to submit any supporting documentary evidence, such as bylaws or the official, specific membership requirements, to support this claim. Further, as previously discussed, 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.

As previously mentioned, it is the petitioner's burden to demonstrate that the beneficiary meets every element of a given criterion, including that membership in the association requires outstanding achievements of its members, as judged by recognized national or international experts. In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "evidence of the alien's

---

<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.

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.<sup>3</sup>

In light of the above, the petitioner has not established that the beneficiary meets the plain language requirements of this regulatory 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.*

The petitioner submitted two photographic spreads from the December 2001 and September 2002 issues of the magazine *Caravan* (also known as *Karavan*) in which the beneficiary’s name is listed under the credits as Costume Designer. Initially, counsel asserted that because the beneficiary is the only designer of faux tattoo clothing, any articles about her work as essentially about her. On appeal, counsel notes that the material appeared in a foreign publication, but does not explain how the foreign nature of the publication is relevant to whether the material is “about” the beneficiary. The plain language of this regulatory criterion requires “published material about the alien.” Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material about the alien’s work rather than about the alien). The preceding articles do not meet the requirements at 8 C.F.R. § 204.5(h)(3)(iii) because they are not about the beneficiary relating to her work.

In addition, the petitioner submitted an interview with the beneficiary from the magazine *Natali* (spelling according to the website *mondotimes*).<sup>4</sup> The AAO acknowledges that the interview is “about” the beneficiary. In order for published material to meet this criterion, however, it must be printed in

---

<sup>3</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*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).

<sup>4</sup> The AAO notes here that although the article states the beneficiary “was a member of the jury” for a “competition of young designers,” the petitioner has never raised a claim under 8 C.F.R. § 204.5(h)(3)(iv) and has not submitted primary evidence of that role from the competition itself. The AAO, therefore, considers any potential claim under this criterion as effectively abandoned. See generally *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

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.<sup>5</sup>

The petitioner failed to submit evidence, such as distribution and circulation data, to demonstrate that either publication qualifies as major media. Instead, the petitioner submitted information from *ebay* reflecting that *Caravan* offers issues for sale on this website, information from the website *mondotimes* affirming only that *Natali Magazine* is a Ukraine magazine covering entertainment and untranslated material in a foreign language from *Natali Magazine's* website. This information does not document the circulation and distribution of either magazine.

Furthermore, as previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the AAO found that the interview of the beneficiary in *Natali Magazine* was qualifying, which it does not, the plain language of this regulatory criterion requires evidence of published material in publications or media in the plural.

In light of the above, the petitioner has not established that the beneficiary meets the plain language requirements of this regulatory criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish that the evidence was qualifying. While the record contains a number of letters praising the beneficiary's work, the letters fail to put this evidence in the necessary context to reach a conclusion that the beneficiary has made *original contributions of major significance*.

states that "[i]t was due to her outstanding and inventive cutting-edge design contribution which resulted and produced our line of tattoo clothing." He also stated that "[d]ue to the input and efforts of [the beneficiary], I launched an apparel line which has received international acclaim and orders. The beneficiary's contribution to the author's own company is insufficient to meet all of the elements for this criterion, most importantly that it be an original contribution "of major significance in the field." Furthermore, Mr. Tinsley's letter fails to explain the beneficiary's exact role and the specific contribution(s) made by the beneficiary.

The remainder of the letters praise the beneficiary for her work, but do not claim that that the beneficiary has made original contributions of major significance in the field. Rather the letters, while complimentary, are evidence that the beneficiary has successfully completed the tasks she was

---

<sup>5</sup> 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.

hired to perform. These letters affirm the originality of the beneficiary's work, but not its impact in the field of fashion design at a level consistent with a contribution of major significance in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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 (9th Cir. 2010).<sup>6</sup> The opinions of experts in the field are not without weight and have been considered above. 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, as this decision has done above, 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. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In light of the above, the petitioner has not established that the beneficiary meets the plain language requirements of this regulatory criterion.

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

The director concluded that the petitioner did not submit qualifying evidence on behalf of the beneficiary under 8 C.F.R. § 204.5(h)(3)(vii). The record does not support this conclusion.

While the AAO does not agree with counsel's assertion that the publication of the beneficiary's work in a magazine satisfies this criterion, evidence of the display of the beneficiary's designs in two or more fashion shows and/or competitions is sufficient to determine that the beneficiary has satisfied the plain language requirements for this criterion.

---

<sup>6</sup> 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" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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

The petitioner submitted two letters from ██████████, one with the original filing and one in response to the director's request for evidence, with whom the beneficiary has worked. In the letter submitted in response to the director's request for evidence, ██████████ states that the beneficiary has "contributed" to numerous Hollywood films and has "played a key leading role as a Lead Designer/Pattern Maker." He also states that "[i]t was due to [the beneficiary's] outstanding and inventive cutting-edge design contribution which resulted and produced our line of tattoo clothing." In the letter submitted with the original petition, ██████████ states that he "launched an apparel line...which [I] had major input from [the beneficiary]" which he "could not have accomplished [I] without [the beneficiary's] artistic efforts." The AAO notes that ██████████ also submitted a memorandum regarding the beneficiary's terms of employment with his company which states that "[the beneficiary's] services will be required on a production by production basis."

Any organization or establishment that retains the services of an individual requires someone competent to provide those services. In the case of a leading role, the petitioner must demonstrate how the beneficiary's role fits within the overall hierarchy of the organization or establishment. In the case of a critical role, the beneficiary must have contributed to the success of the establishment or organization beyond merely providing necessary services.

The fact that ██████████ has retained the beneficiary on an as needed basis is insufficient to demonstrate that the beneficiary has performed in a leading or critical role. For example, the record does not establish the total number of designers and pattern makers or contain an organizational hierarchy. It is to be expected that companies like ██████████ would routinely rely on qualified designers and pattern makers.

While counsel has referenced the beneficiary's contributions to several films, the record contains no movie credits naming the beneficiary. The petitioner did submit ██████████ film credits from the International Movie Database (IMDb), but not the beneficiary's. The record does not satisfactorily resolve how the beneficiary could have played a leading or critical role for films for which she is not named in the credits. Moreover, an individual film is not an organization or establishment.

Furthermore, as previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the AAO found that the beneficiary performed in a leading or critical role, which it does not, the plain language of this regulatory criterion requires evidence of performing in a leading or critical role for more than one organization or establishment. The burden is on the petitioner to establish that the beneficiary meets every element of this criterion. Without documentary evidence demonstrating that the beneficiary has performed in a leading or critical role for more than one organization or establishment with a distinguished reputation, the AAO cannot conclude that the beneficiary meets this criterion.

In light of the above, the petitioner has not established that the beneficiary meets the plain language requirements of this regulatory criterion.

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

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1228 n. 2, *Hristov v. Roark*, 2011 WL 4711885 at \*9 (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

### B. Summary

As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that the beneficiary satisfies 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 on behalf of the beneficiary 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>7</sup> Rather, the proper conclusion is that the petitioner has

---

<sup>7</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).

failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122. The AAO does note, however, that counsel's initial attempt to narrow the beneficiary's field to those fashion designers who design faux tattoo clothing is not persuasive. The petitioner may not narrow the beneficiary's field to include only the beneficiary and her assistants.

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

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

**ORDER:** The appeal is dismissed.