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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 19 2012

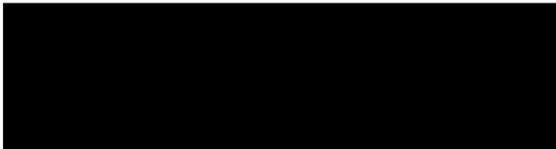
Office: TEXAS SERVICE CENTER

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, 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” as a sports journalist and producer pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). 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 January 4, 2011. On January 14, 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 February 24, 2011. On appeal, the petitioner submits a brief with no new documentary evidence. Several sections of the appellate brief are almost verbatim from counsel’s response to the RFE and add nothing new to the record. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his 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. Application of the *Kazarian* Analysis

Counsel's appellate brief puts forth an assertion that the director "erred in denying the underlying I-140 Petition in that it failed to apply the appropriate analysis pursuant to [the] *Kazarian* [decision]. Counsel failed to support this assertion with any additional discussion or examples. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). Additionally, the director referenced the *Kazarian* decision and applied the two-part analysis specifically identified within the *Kazarian* decision. As such, the AAO does not concur with counsel's assertion regarding the director's failure to adhere to the analysis identified in the *Kazarian* decision. Regardless, the AAO will apply the Ninth Circuit's reasoning in this decision.

### B. Preponderance of the Evidence Standard of Proof

Counsel's appellate brief also indicated that the director failed to apply the appropriate standard of proof to both the individual criteria as well as within the final merits determination. The record does not support counsel's assertion that the director held the petitioner's evidence to an elevated standard beyond that which is required by most administrative immigration cases; the preponderance of the evidence standard of proof. The most recent precedent decision related to the preponderance of the evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). This decision, and this standard, focuses on the factual nature of a claim related to evidence; not whether a claim satisfies a regulatory requirement. *Id.* at 376. The preponderance of the evidence standard does not preclude USCIS from evaluating the evidence. The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* The final determination of whether the evidence meets the plain language requirements of the regulation lies with USCIS, not with counsel nor with the petitioner. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS in a scenario whereby an advisory opinion or statement is not consistent with other information that is part of the record). As the director determined that the submitted evidence failed to satisfy the regulatory requirements, and did not question the truthfulness of the petitioner's claims, the AAO concludes that the director did not violate the appropriate standard of proof. According to this analysis, the AAO concurs with the director's ultimate conclusion that the evidence does not establish the petitioner's eligibility.

### C. 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.*

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien was the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided a photograph of himself with two awards, two letters referencing the claimed awards, and information related to the [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

The photograph does not demonstrate that the awards in the photograph are the awards that the petitioner purportedly received, nor does it demonstrate that the petitioner was the recipient of the claimed awards. The letter from [REDACTED] indicated that the show [REDACTED] was the recipient of both awards while [REDACTED] indicated that the petitioner won the two awards. The petitioner provided both letters that contain conflicting information. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* As the petitioner has provided evidence containing conflicting, relevant claims, and has not provided documentary evidence to clarify which form of evidence contains the correct facts, neither form of evidence noted will carry any evidentiary weight within the present proceedings.

The director determined that based on the [REDACTED] website, [REDACTED] received the [REDACTED] [REDACTED] website contained no information related to the [REDACTED] for [REDACTED]. On appeal, counsel claims that the petitioner was the recipient of both [REDACTED]. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Consultation of the [REDACTED]' website confirms the director's findings related to the [REDACTED], and the AAO found no information related to the [REDACTED].<sup>3</sup> Where the

<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.

<sup>3</sup> See [http://www.tellyawards.com/winners/list/?l=E&pageNum\\_winners=1&totalRows\\_winners=52&event=11&category=1&award=S](http://www.tellyawards.com/winners/list/?l=E&pageNum_winners=1&totalRows_winners=52&event=11&category=1&award=S), accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. There is no primary evidence demonstrating the petitioner received the [REDACTED] for [REDACTED] and the [REDACTED]. In this case, while the petitioner submitted confirmation letters, those letters are not affidavits and he failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained.

Additionally, the director determined that the petitioner failed to provide evidence that the awards were nationally or internationally recognized. The petitioner failed to address this regulatory requirement on appeal.

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

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

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that he is a member of more than one association in his field. Second, the petitioner must demonstrate that the associations require outstanding achievements (in the plural) of their members. The petitioner must also demonstrate that the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner's field, who represent the association, make this determination. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided evidence of membership in two associations. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner's memberships are in the [REDACTED] and in the [REDACTED]. In reference to the [REDACTED], the petitioner provided supporting documentation from Wikipedia. As noted by the director under a separate criterion, with regard to information from *Wikipedia*, there are no assurances about the

reliability of the content from this open, user-edited internet site.<sup>4</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). The petitioner failed to submit evidence of the membership requirements for these associations. On appeal, counsel attests to the prestige of ██████ and asserts that ██████ selects members by invitation only. Counsel does not rebut the director's conclusion that *Wikipedia* is not reliable. At issue is not the prestige of the associations, which may be earned for reasons other than membership requirements, or even whether membership is by invitation only. At issue are the actual membership requirements and who judges admission. As the record does not contain the bylaws or other official documentation of the association's membership criteria, the AAO cannot evaluate whether the petitioner's memberships are qualifying. Thus, the petitioner has not established that he meets the requirements of this criterion. The petitioner also failed to provide evidence that nationally or internationally recognized experts in the field judge admittance to either association.

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

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. Specifically, the director concluded that radio broadcasts are not "published" material and that the material was not "about" the petitioner. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments beyond simply restating the positions put forth in the RFE response. More specifically, counsel does not address the director's conclusion that the published material is not about the petitioner. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Atty Gen.*, 401 F.3d 1226, 1228 n. 2 (11<sup>th</sup> Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11<sup>th</sup> Cir. 2009) citing *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5<sup>th</sup> Cir.1979). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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<sup>4</sup> Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish that the incidental review duties involved in his position as a coordinator did not amount to participating as “a judge” of the work of others. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments beyond simply restating the positions put forth in the RFE response. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9; *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435. Accordingly, the petitioner has not submitted qualifying evidence under 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) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his 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 based his eligibility under this criterion on the fact that he gives back to his community within his field. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner failed to identify any significant impact he has had in his field through giving back to his community. The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments beyond simply restating the positions put forth in the RFE response. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9; *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The petitioner provided several of his sports related articles. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel claims that although the regulation at 8 C.F.R. § 204.5(h)(3)(vi) plainly requires the authorship of "scholarly articles," the AAO should consider the petitioner's evidence as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). This decision discusses comparable evidence separately below.

American universities have generally accepted standards for scholarly articles. For example, the article must:

- Be written by researchers, professors, or students in the respective field;
- Contain the author's credentials;
- Contain original research;
- Be peer-reviewed or refereed;
- Always contain a bibliography or references;
- Usually will be published in research or academic journals;
- Have an audience of those with knowledge of the subject, such as experts or scholars; and
- Utilize the vocabulary of the discipline.<sup>5</sup>

The [REDACTED] characterizes scholarly articles as:

[W]ritten by researchers, professors, or students and are published in research or academic journals. Scholarly articles (also known as peer-reviewed or refereed articles) have the highest level of credibility because they have been put through a rigorous

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<sup>5</sup>See <http://www.umuc.edu/library/libhow/articles.cfm>; <http://www.lib.umd.edu/guides/journals.html#scholarly>;  
<http://www.umuc.edu/library/libhow/scholarlyjournals.cfm>; <http://www.library.american.edu/tutorial/type4.html>;  
<http://olinuris.library.cornell.edu/ref/research/skill20.html>; <http://www.csupomona.edu/~ecgibson/journal.html>; and  
<http://library.ucf.edu/Rosen/Scholarly.pdf>.

system of review as other experts in the author's field of research check the article for accuracy.<sup>6</sup>

The fact that the petitioner has authored an article on a topic within his field is insufficient to demonstrate that he meets the plain language requirements of this criterion. While the regulation does not require that the published material appear only in a professional or a major trade publication, it does require that it be a scholarly article. Therefore, published material appearing in major media should also contain the aforementioned characteristics. As the petitioner's articles were not peer-reviewed and do not contain citing references, the submitted articles do not meet the plain language requirements of this criterion.

USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5(h)(3). *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). Based on the fact that the petitioner has not authored articles that are scholarly in nature, he has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy. The plain language requirements of this criterion requires that the work in the field is directly attributable to the alien. Additionally, the interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). The alien's work also must have been displayed at an artistic exhibitions or showcases (in the plural). While neither the regulation nor existing precedent speak to what constitutes an exhibition or a showcase, Merriam-Webster's online dictionary defines exhibition as, "a public showing (as of works of art)."<sup>7</sup> Merriam-Webster's online dictionary also defines showcase as, "a setting, occasion, or medium for exhibiting something or someone especially in an attractive or favorable aspect."<sup>8</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 display of his work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner asserted that his performances over the radio are equivalent to the display of his work at an artistic exhibition and that the submitted evidence should be considered as comparable evidence. Counsel failed to provide any legal analysis to support the position that journalistic performances over

<sup>6</sup> See <http://www.umuc.edu/library/libhow/articles.cfm>, accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

<sup>7</sup> See <http://www.merriam-webster.com/dictionary/exhibition>, accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

<sup>8</sup> See <http://www.merriam-webster.com/dictionary/showcase>, accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

the radio constitute the display of work at an *artistic* exhibition or a showcase. The AAO will consider comparable evidence separately below. The director determined that the petitioner failed to meet the requirements of this criterion.

As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, he has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

*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>9</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 letters from representatives of [REDACTED], and the [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

The AAO will consider the letters below. At the outset, the AAO notes that merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, 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).

The letter from the [REDACTED] representative, [REDACTED] provided the petitioner's duties but lacked a description of the petitioner's position in the hierarchy of his organization. Without an organizational chart or other evidence documenting how the petitioner fits within the general

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<sup>9</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on July 10, 2012, a copy of which is incorporated into the record of proceeding.

hierarchy of [REDACTED], the petitioner cannot rely on this evidence to establish that he has performed in a leading role for this organization.

The letter from [REDACTED] for [REDACTED] merely indicated that the petitioner "plays an important role in expanding [REDACTED] editorial coverage among the different shows on the radio network." [REDACTED] letter lacks any additional description indicating how the petitioner's performance could be construed to be leading within [REDACTED] as a whole or how his performance was critical to the success of the organization. Regardless, [REDACTED] did not sign her letter. Thus, it has no evidentiary value.

[REDACTED], a consultant and public relations representative of [REDACTED], failed to provide any specific actions attributable to the petitioner that reflect a leading role within [REDACTED] organizational structure or that describe any essential role the petitioner might have played within [REDACTED]. [REDACTED] simply stated that [REDACTED] recent growth is due in part to media coverage by networks such as [REDACTED]; the network that employs the petitioner. [REDACTED] also indicated that the petitioner has regularly supported [REDACTED] in the public arena and that the petitioner uses his knowledge of the sport and his influence to increase soccer fans' familiarity with the sport.

The final letter from [REDACTED] a representative of the [REDACTED] also falls short of describing the petitioner's leading or critical role that he might have performed for this organization. [REDACTED] letter only points out that the petitioner is a recognized member and has promoted the [REDACTED] activities, and that the club has benefitted from the petitioner's knowledge of soccer.

It is the petitioner's burden to provide evidence relating to every element of a given criterion. Although [REDACTED] may be a household name in the United States, the petitioner has provided no evidence to indicate that the above named organizations or establishments have a distinguished reputation. Without such evidence, the petitioner cannot meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(viii).

As such, 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 director discussed the evidence submitted for this criterion, comparing the petitioner's earnings of \$46,225.04 with the *median* wage among reporters and correspondents in the United States without demonstrating what a high salary is in that field. The director ultimately found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments beyond simply restating the positions put forth in the RFE response. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9; *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion anticipates a petitioner will establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts.

The director discussed the evidence submitted for this criterion, DVDs of interviews the petitioner had conducted, and found that the petitioner failed to establish his eligibility under a criterion that requires evidence of sales volume. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Counsel's appellate brief simply restates the positions put forth in the RFE response. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

#### D. Comparable Evidence

The petitioner asserted in the alternative that if the AAO finds certain evidence insufficient to meet some of the criteria, the AAO should consider such evidence as comparable evidence. The criteria are written "in terms broadly applicable." 56 Fed. Reg. at 60898. Nevertheless, 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 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 his 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 a sufficient number of the criteria do not readily apply to the petitioner's occupation as a sports journalist and producer. In fact, as indicated in this decision, counsel mentioned evidence in her appellate brief that specifically addressed all ten of the criteria at the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet or submit documentary evidence under 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.

#### E. 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>10</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.

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.

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<sup>10</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).