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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:

JUN 13 2012

Office: NEBRASKA SERVICE CENTER

FILE:

[Redacted]

IN RE:

Petitioner:
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 with the field office or service center that originally decided your case by filing a 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. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on November 10, 2010. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of contemporary classical music composition, 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 that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and the following evidence: (1) an August 18, 2010 United States Citizenship and Immigration Services (USCIS) Policy Memorandum on evaluation of Form I-140 petitions, (2) an English translation of a Korean document about the Nanpa Festival, a Korean music festival, (3) a partial English translation of a Korean document on the Nanpa Music Festival’s past award winners, (4) December 8, 2010 online printouts about musicians [REDACTED] (5) December 8, 2010 online printouts about the Korean Culture and Arts Promotion Fund, (6) English translations of Korean documents from the Korean National Archives of the Arts and the Korean Culture and Arts Foundation about the 31st Seoul Music Festival, and (7) December 8, 2010 online printouts about the Korea Creative Content Agency (KOCCA). In his brief filed in support of the instant appeal, counsel asserts that the petitioner meets the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), and the leading or critical role for organizations or establishments criterion under 8 C.F.R. § 204.5(h)(3)(viii).

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

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

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

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

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

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

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)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the AAO, conducting appellate review on a *de novo* basis, finds that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and he has not demonstrated that he is one of the small percentage who are at the very top of the field or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3); see also *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

When counsel initially filed the petition on January 13, 2010, he claimed that the petitioner meets the nationally or internationally recognized prizes or awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i). In her September 7, 2010 decision, the director concluded that the petitioner's awards "are sufficient to meet this criterion," but the "awards fail to evidence sustained acclaim of the petitioner." Upon a review of the record, the AAO disagrees with the director. Instead, the AAO finds that the evidence does not establish that the petitioner has met this criterion.

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

Counsel has filed the following evidence in support of the assertion that the petitioner meets this criterion:

1. An English translation of a Korean document entitled "Mothers [sic] Milk is the best!", indicating that the petitioner won third prize for his composition entitled [REDACTED];
2. An English translation of a Korean document entitled "Music Award," indicating that the petitioner received [REDACTED] for his composition [REDACTED] at the "Citizen Promotion Project held by Ministry for Health, Welfare and Family Affairs and Planned Population Federation of Korea";
3. November 17, 2009 online printouts about the Korean Ministry for Health, Welfare and Family Affairs, and the Planned Population Federation of Korea, a non-governmental organization;
4. An English translation of a Korean document entitled [REDACTED]" indicating that the petitioner was awarded the grand prize in composition [REDACTED];
5. An English translation of a Korean online printout entitled [REDACTED] that discusses the [REDACTED];
6. An English translation of a Korean document entitled "Award," indicating that the petitioner received [REDACTED] at the 31st Seoul Music Festival; and
7. A September 30, 2009 letter from [REDACTED], listing the petitioner's four awards.

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion, because he has not shown that his four awards constitute nationally or internationally recognized prizes or awards for excellence in the field of contemporary classical music composition. First, none of the award certifications have been properly translated under the regulation at 8 C.F.R. § 103.2(b)(3), which states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Although the petitioner has provided a number of Affidavits of Translation of Foreign Document, none of them indicate that the translation is a full English translation. Indeed, each Affidavit states that the "translation or *abstract* translation . . . is a true and correct translation." (Emphasis added.)

Second, the petitioner's awards are not accompanied by information about the competitive categories in which he competed, including how his competitions were nationally or internationally recognized in the field of contemporary classical music composition. The petitioner has not submitted evidence (such as official results) showing the number of participants in the competitive categories in which he received awards, the standing or recognition of the other participants in his categories, the awards' nomination or selection process, or any other indication that the awards are

nationally or internationally recognized awards for excellence in the field of contemporary classical music composition, including but not limited to media coverage of the events.

Specifically, the AAO notes that the petitioner has provided no information on the nomination or selection process of the 1999 Citizen Promotion Project, in which the petitioner's composition "Love Meeting, Mother's Milk" won the third place. Given that the Citizen Promotion Project was associated with a public awareness campaign, not a musical competition, the AAO finds no evidentiary support to conclude that the judges judged the composition based on its musical quality, rather than other considerations, such as, the relevance of the song to the campaign. As such, the AAO cannot conclude that the petitioner's third place finish at the Citizen Promotion Project constitutes evidence of his receipt of a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor.

Similarly, according to an English translation of a Korean online printout entitled "Nanpa Festival," the competition was divided into categories for children and adults, and for primary, secondary and college students. It is unclear from the award certificate in which category the petitioner participated. The lack of information on the specific competitive category, in which the petitioner claimed to have received a grand prize, and information on fellow participants in the competitive category does not support a finding that the petitioner's placement in the competition constitutes evidence of a lesser nationally or internationally recognized prize or award. In counsel's response to the director's Request for Evidence, counsel asserted that this competition "is open to professional musicians 20 years of age or younger." The AAO notes that at the time of the 2001 competition, the petitioner, who was born in November 1974, was twenty-six years old. It therefore appears that the petitioner was not eligible to compete in the competition. The petitioner has provided inconsistent documents and "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Finally, the evidence in the record does not establish that a grand prize [REDACTED] is a national or international recognized prize or award for excellence in the field of contemporary classical music composition. In response to the director's Request for Evidence, counsel provided a three-page Korean document on the [REDACTED] with a half-page English translation. Clearly, the English translation is not a full translation as required under the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, according to the partial English translation, the only qualification for the competition is Korean citizenship. In addition, the evidence shows that the petitioner was one of fourteen award winners in the chamber music category, a competitive category that has an unspecified number of participants. In short, none of the evidence supports a finding that the petitioner's award [REDACTED] constitutes receiving a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(i).

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

When counsel initially filed the petition, he claimed that the petitioner meets the membership in associations that require outstanding achievements criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Counsel continued to assert that the petitioner meets this criterion in his response to the director's Request for Evidence. As supporting evidence, counsel provided: (1) a photocopy of the petitioner's membership card for the Music Association of Korea, Korean National Committee of International Music Council, (2) a photocopy of a September 4, 2009 certificate of holding office, certifying that the petitioner is a "regular member" of the Music Association of Korea, and (3) a September 1, 2009 letter from [REDACTED] verifying the petitioner's membership. In her September 7, 2010 decision, the director found that the petitioner does not meet this criterion, because the evidence does not show that the Music Association of Korea requires outstanding achievements of its members.

On appeal, counsel has not asserted that the petitioner meets this criterion. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

When counsel initially filed the petition, he claimed that the petitioner meets the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). In response to the director's Request for Evidence, counsel specifically stated that the petitioner's [REDACTED] and [REDACTED] constitute original artistic contributions of major significance in the field of contemporary classical music composition. In her September 7, 2010 decision, the director concluded that the petitioner has not met this criterion. The AAO concurs.

As supporting evidence that the petitioner meets this criterion, counsel has provided:

1. An English translation of a Korean document entitled [REDACTED] is the best!”, indicating that the petitioner composed a piece named [REDACTED]
2. An English translation of the Korean program of [REDACTED] indicating that the petitioner composed a piece called [REDACTED];
3. An English translation of the Korean program of [REDACTED] indicating that the petitioner composed a piece called [REDACTED];
4. The petitioner’s portfolio, which includes the sheet music of six pieces, dated from 1998 to 2007;
5. A September 29, 2009 letter from [REDACTED] concluding that, based on a review of the petitioner’s “background, history, resume and compositions,” the petitioner’s compositions “are performed annually to commemorate the Seoul Music Festival” and the petitioner was given a “\$200,000.00 [grant] to produce contemporary classical music”;
6. An October 9, 2009 letter from [REDACTED] stating that, upon review of the petitioner’s resume and portfolio, [REDACTED] concludes that the petitioner “has won numerous awards in the field of Contemporary Classical Music composition that are nationally acclaimed and much sought after”;
7. An October 14, 2009 letter from [REDACTED] and [REDACTED], confirming that he has had “the pleasure of reviewing [the petitioner’s work as a composer]” and stating that the petitioner’s compositions “are inspiring nationally and internationally”;
8. An October 16, 2009 letter from [REDACTED] a musician, confirming that he has had “the opportunity to review [the petitioner’s] background, resume and qualifications” and stating that the petitioner received “grants in excess of \$200,000.00 for musical production”; and
9. A March 2, 2010 letter from [REDACTED], a founding member of [REDACTED] stating that she will perform the petitioner’s piece [REDACTED] and [REDACTED] in her upcoming chamber music works.

With the exception of the letter from [REDACTED], the petitioner’s references do not suggest that they were previously aware of the petitioner through his reputation prior to being contacted for a reference letter. While they all assert that the petitioner meets a sufficient number of the criteria set forth at 8 C.F.R. § 204.5(h)(3), 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*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). 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).

Based on the evidence in the record, the AAO finds that although the petitioner has shown evidence of original compositions, he has not shown that his compositions constitute contributions of major significance in the field of contemporary classical music composition. First, the composition [REDACTED] was composed and used for the Korean government's public awareness campaign relating to breastfeeding. The composition might be considered an important element in the government's public awareness campaign, but it cannot be said to have major significance in the field of contemporary classical music composition. Indeed, as noted, the evidence does not even establish that the judges who awarded the petitioner's composition the third place finish at the Citizen Promotion Project were musicians. Second, although counsel asserted in his response to the director's Request for [REDACTED] "has been performed by professional flutists across South Korea for over 10 years" and "[m]ost recently performed by the famed Korean flute soloist [REDACTED] on July 30, 2009," the evidence does not support these assertions. The evidence shows that [REDACTED] was performed in the [REDACTED]. The evidence does not show that the piece was performed at any other time. In his response to the director's Request for Evidence, counsel pointed to documents under Exhibits E and G to support his assertions. The documents under Exhibits E and G, however, do not include evidence that the piece was performed after 1999. Moreover, assuming *arguendo* that the petitioner had presented evidence that his composition was performed twice, once in 1999 and once in 2009, the AAO would conclude that this evidence does not support a finding that the piece constitutes a contribution of major significance in the field of contemporary classical music composition. Producing music for musicians to perform is inherent to making a living as a composer. Not every composition performed is a contribution of major significance to the field of composition. Moreover, neither the other compositions nor his reference letters establish that any of the petitioner's compositions constitute a contribution of major significance in the field.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to find that the petitioner's 1998 composition "Goot (The Second)" constitutes his original contribution of major significance in the field of contemporary classical music composition, this single example of a contribution is insufficient evidence of contributions of major significance in the plural.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of stage management and creation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

When counsel initially filed the petition, he claimed that the petitioner meets the authorship of scholarly articles criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Counsel continued to assert that the petitioner meets this criterion in his response to the director's Request for Evidence.

As supporting evidence, counsel provided a number of documents, including (1) an English translation of a Korean document, entitled [REDACTED] and (2) online printouts on a number of internet websites that counsel stated had reprinted the petitioner's article. In her September 7, 2010 decision, the director found that the petitioner has not met this criterion, because the "record lacks evidence to establish if this article is published in a major music oriented media." On appeal, counsel has not asserted that the petitioner meets this criterion. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at *9.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

When counsel initially filed the petition, he claimed that the petitioner meets the display at artistic exhibitions or showcases criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Counsel continued to assert that the petitioner meets this criterion in his response to the director's Request for Evidence. In her September 7, 2010 decision, the director found that the petitioner has not met this criterion. Upon a review of the record, the AAO disagrees with the director. In short, based on the evidence in the record, including documents showing that the petitioner's compositions were performed [REDACTED] AAO finds that the petitioner has presented evidence of the display of his work in the field at artistic exhibitions or showcases. The petitioner has met this criterion. See 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. 8 C.F.R. § 204.5(h)(3)(viii).

When counsel initially filed the petition, he asserted that the petitioner meets the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Counsel continued to assert that the petitioner meets this criterion in his response to the director's Request for Evidence. Specifically, counsel asserted that the petitioner "was the founder and deputy director" [REDACTED] [REDACTED] "a leader in high quality production of established and emerging artists alike." In her September 7, 2010 decision, the director concluded that the petitioner has not met this criterion, because the evidence does not show that [REDACTED] has a distinguished reputation. The AAO agrees.

As supporting evidence that the petitioner meets this criterion, counsel has provided a number of documents, including: (1) a certification of business register, dated January 12, 2002, listing the petitioner as the representative, (2) an undated document, entitled [REDACTED] [REDACTED] Letter" that the [REDACTED] [REDACTED] (3) a June 11, 2002 document, entitled [REDACTED] [REDACTED] as the producer of [REDACTED] [REDACTED] with a support fund of 30 Million Won from the Korea Creative Contents Agency, (4) a May 17, 2002 Joint Copyright Agreement between [REDACTED] [REDACTED] (5) two Letters of Credit Guarantee, both dated February 28, 2002, (6) a

December 16, 2002 Letter of M.O.U. Agreement between [REDACTED] of [REDACTED] and (7) [REDACTED] promotional material. None of the documents, however, shows that [REDACTED] is an organization or establishment that has a distinguished reputation. Counsel asserts in his brief filed in support of the appeal that the fund discussed in the Korean government's loan documents "was not loaned, but awarded to [the p]etitioner from the Korean Creative Content Agency based upon [the p]etitioner's distinguished reputation as a composer." Notwithstanding these documents, counsel has not pointed to any evidence in the record to support his assertion that an artistic foundation's ability to secure government grants is evidence of the foundation's reputation. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In short, the AAO concurs with the director that the petitioner has not shown that GSM has a distinguished reputation.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence showing that the petitioner has performed in a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation. This requirement is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that GSM has a distinguished reputation, the record lacks evidence showing that the petitioner has performed a leading or critical role for a second organization or establishment that has a distinguished reputation.

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

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or his achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); see also *Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion

in a final merits determination.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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

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.

³ 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 INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).