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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: JUN 20 2012

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 14, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on February 8, 2011. The appeal will be dismissed.

According to counsel's brief filed in support of the appeal, the petitioner seeks classification as an "alien of extraordinary ability" in "the field of the grain industry in China," 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, asserting that the director erred. Counsel also submits approximately seven hundred pages of supporting documents, most which were previously submitted to the director. 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 failed to satisfy at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3). 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.

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed 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 concurs with the director's finding that the petitioner has failed to satisfy the antecedent requirement of presenting at least three of the ten qualifying evidence under 8 C.F.R. § 204.5(h)(3).

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).

II. ANALYSIS

A. Evidentiary Criteria²

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).

Counsel asserts that the petitioner meets this criterion because he has received the following awards:

- (1) [REDACTED] on October 1, 1999,
- (2) [REDACTED] Award, in April 2009, and [REDACTED] in September 2006,
- (3) [REDACTED] Award, in April 2009,
- (4) [REDACTED] r Award, in March 2009, and 2006 [REDACTED] in March 2007,
- (5) [REDACTED] in April 2008, and
- (6) Awards presented to the petitioner's companies.

Based on the evidence in the record, the AAO concurs with the director's finding that none of the awards constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor. First, although the petitioner has provided an online printout from the Chinese government's official web portal stating that [REDACTED] is the highest executive organ of State power and the highest organ of State administration, he has not, however, established that the award [REDACTED] – constitutes a nationally or internationally recognized prize or award for excellence in the grain industry. Specifically, the record lacks evidence relating to the nomination or selection process of the award in 1999, or information on who or how many people were considered or selected for the award in 1999. In addition, the AAO gives minimum weight to the articles entitled [REDACTED] [REDACTED] because the source of the articles is either wikipedia.com or baidu.com, and there are no assurances about the reliability of the content from these two open, user-edited internet sites.³ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

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

³ Online content from Wikipedia is subject to the following general disclaimer entitled "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

Moreover, even if the AAO were to consider the English translation of the baidu.com article entitled [REDACTED] the AAO would not conclude that the award constitutes a nationally or internationally recognized prize or award for excellence in the field of grain industry. Specifically, according to the document, someone who is a “law abiding individual[] who [has] high professional ethics, served as [a] model in [his/her] industry, [has a] senior professional and technical position[]” and is a graduate of Chinese Academy of Science or Chinese Academy of Engineering may be presented with the award. Furthermore, the award aims to “further promote[] the growth of advanced experts in each field of China,” rather than to award people who have already achieved excellence in their respective field. In short, the evidence is insufficient to establish that the award constitutes a nationally or internationally recognized prize or award for excellence.

Second, although the petitioner has provided an English translation of an online printout from [REDACTED] that discusses [REDACTED] he has not established that his two Outstanding Venturing Entrepreneur awards constitute nationally or internationally recognized prizes or awards for excellence in the grain industry. Specifically, the record lacks evidence relating to who or how many people were considered or selected for the award in 2006 or 2009. Although the document entitled [REDACTED] and [REDACTED] provides some information on the nomination process, including that candidates for the award are nominated from the organization’s provincial branches, it provides no information on the number of candidates or award winners in either 2006 or 2009. A list of winners from the association’s website includes 23 names, which is not indicative of a prize or award for excellence that is nationally or internationally recognized.

Moreover, as noted by the director, it is clear from the document that only executives of “current organizational member[s] [REDACTED] are eligible for the award. Although [REDACTED] stated in his December 23, 2010 letter that the organization’s “membership consists of more than 1,000 companies, comprising of approximately 6,000 facilities, and about 30,000 individual members,” he did not provide specific membership information for 2006 or 2009. He also did not provide information as to the non-member population in 2006 or 2009. Furthermore, the evidence submitted to show the recognition of the petitioner’s awards is

necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 5, 2012, a copy of which is incorporated into the record of proceeding.

from the entity that issued the award. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the 2006 or 2009 award in nationally or internationally circulated publications.

In addition, the AAO finds that information on other award recipients – [REDACTED] – and their professional career is insufficient to establish the prestige or significance of the petitioner's awards or the entity that presented the awards. Also, the petitioner has not provided the source of the information on the two individuals, nor has he established that the information on them is complete or accurate. In short, the evidence is insufficient to establish that the petitioner's two awards, received in 2006 and 2009, from [REDACTED] constitute nationally or internationally recognized prizes or awards for excellence in the grain industry.

Third, although the petitioner has provided an English translation of a February 27, 2006 online printout from [REDACTED] that discusses [REDACTED] [REDACTED] award requirements, he has not established the award constitutes a nationally or internationally recognized prize or award for excellence in the grain industry. Specifically, the record is devoid of evidence relating to who or how many people were considered for the award in 2009.

The evidence also fails to establish the prestige of [REDACTED]. Although the October 29, 2010 online printout from [REDACTED] includes an "association profile" of the [REDACTED] there is no evidence that the [REDACTED], which presented the petitioner with an award, is the same as the [REDACTED]. Even assuming [REDACTED] that they were the same organization, the AAO would nonetheless find that the online printouts from [REDACTED] not constitute objective and independent evidence showing the organization's prestige or, more specifically, the national or international recognition of the award, as the petitioner has not provided any evidence on the nature or reputation of either website. In short, the evidence is insufficient to establish that the petitioner's Top 10 Outstanding Individuals award constitutes a nationally or internationally recognized prize or award for excellence.

Fourth, although the petitioner has provided an English translation entitled [REDACTED] [REDACTED] that discusses the selection of [REDACTED] [REDACTED] he has not established that either his [REDACTED], presented in 2009, or [REDACTED] [REDACTED] award, presented in 2007, constitutes a nationally or internationally recognized prize or award for excellence in the field of grain industry. Specifically, the record lacks evidence on who or how many people were nominated, considered or selected for the award in 2009 or 2007. The record also lacks evidence that the field recognizes the award, such

as but not limited to general or trade media coverage of the award selections. While the petitioner submitted April 2009 coverage of the petitioner's receipt of this award at [REDACTED]. The record contains no evidence regarding the significance or independence of this website.

As relating to the award presented in 2009, although the document [REDACTED] provides some information on the nomination and selection process, it provides no information on the number of candidates or award winners in 2009. Also, as the document is dated August 24, 2009, after the petitioner was presented the award in March 2009, the petitioner has not shown that the award requirements discussed in the document applied to his selection.

As to the award presented in 2007, the petitioner has not provided any information on who or how many people were considered or selected for the award in 2007. Indeed, other than the Certificate of Honor, dated March 2007, the record contains no other document that explains or discusses in detail this award.

Furthermore, the documents submitted to show the recognition of the petitioner's two awards is from the [REDACTED] the entity that issued the awards, and the entity's [REDACTED]. Such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10. The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the awards in nationally or internationally circulated publications. Also, the petitioner's evidence that [REDACTED] "has received [REDACTED] in [REDACTED]" is insufficient to establish that the petitioner's [REDACTED] presented in 2009 and 2007, meet this criterion. In short, the evidence is insufficient to establish that the awards constitute nationally or internationally recognized prizes or awards for excellence.

Fifth, although the petitioner has provided an English translation entitled [REDACTED] he has not established that the award constitutes a nationally or internationally recognized prize or award for excellence in the grain industry. Specifically, although the document states that the award "is one of the country's highest awards," the AAO affords the document, whose source and accuracy is unknown, minimal evidentiary value. Even if the petitioner had shown that the document was from the All-China Federation of Trade Unions, the AAO would find that it constitutes self-promotional evidence and afford it minimal evidentiary weight. *See Braga*, No. CV 06-5105 SJO at 10. The petitioner has not established the prestige or significance of either the award or the All-China Federation of Trade Unions, as he has not supported the self-promotional evidence with more objective and independent evidence, such as, but not limited to, independent journalistic coverage of the 2008 award in nationally or internationally circulated publications. While the petitioner submitted a one-sentence announcement of the petitioner's receipt of this medal on the [REDACTED] the record contains no evidence regarding the significance of this website.

Moreover, the record lacks evidence on who or how many people were nominated, considered or selected for the award in 2008. Although the petitioner has provided some information on the nomination process, he has provided no information on the number of candidates or award winners in 2008. In short, the evidence is insufficient to establish that the award constitutes a nationally or internationally recognized prize or award for excellence.

Sixth, the petitioner has not shown that any of the awards he claimed his companies received, including the [REDACTED]

[REDACTED] constitute a nationally or internationally recognized prize or award for excellence in the grain industry. Initially, the AAO notes that none of the awards list the petitioner or the petitioner's companies. The petitioner did submit an article entitled [REDACTED]

[REDACTED] Once again, however, the record contains no evidence as to the independence or significance of this website.

Also, the petitioner has not provided information on the nomination or selection process of each award or information on what or how many companies were considered or selected for each award in the relevant year. In addition, the plain language of the criterion requires that the petitioner be the recipient of the qualifying awards, not the petitioner's companies. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008). Although counsel asserts that the success of the companies was a result of the petitioner's leadership, he has not shown that the petitioner meets the criterion under its plain meaning. In short, the evidence is insufficient to establish that the petitioner has received awards that constitute nationally or internationally recognized prizes or awards for excellence.

The record contains Internet profiles of individuals who have won similar awards but, significantly, the petitioner did not submit similar profiles of himself. These profiles cannot establish that the petitioner's awards in and of themselves, rather than the particular awardees named in the profiles, are nationally or internationally recognized.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 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).

Counsel asserts that the petitioner meets this criterion because he was appointed as a councilman for the [REDACTED] second congressional conference in October 2000, and fourth congressional conference in April 2009. As supporting evidence, the petitioner has provided (1) a copy of the petitioner's appointment certificate, dated October 2000, (2) evidence that only members can serve [REDACTED] (3) a copy of the petitioner's appointment certificate, dated April 3, 2009, (4) online documents from [REDACTED], and (5) a December 23, 2010 letter from [REDACTED]. The petitioner has also provided documents showing that he was a committee member of the 9th Board of Committee of All-China Youth Federation in July 2000, a member of the China Enterprise Confederation & China Enterprise Directors Association, [REDACTED]

Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has not met this criterion. As the director noted, the plain language of the criterion requires the petitioner to show (1) membership in associations, (2) that the associations are in the petitioner's field, (3) that the associations require outstanding achievements of their members, and (4) that the outstanding achievements are judged by recognized national or international experts in the relevant disciplines or fields. The petitioner's evidence is insufficient to meet this standard for any of the organizations for which the petitioner is a member. Specifically, the evidence fails to establish that any of the organizations require outstanding achievements from the petitioner, as judged by "recognized national or international experts." For example, although the evidence shows that to become a member of [REDACTED] an applicant must show "great influence in the food and grain industry of China" and "remarkable accomplishment within the field," the record contains no evidence regarding who judges these accomplishments. A list which appears to cover [REDACTED] includes 195 names. Similarly, [REDACTED] which has 436,000 members, requires members to show "extraordinary contributions to the relevant industry" and "significant social influence" and "great contributions to the society." While the petitioner's evidence demonstrates that the Conference of All China Representatives is responsible for recommending membership applications, the evidence ultimately fails to establish that recognized national or international experts judge the membership.

Moreover, as the director pointed out, the record contains no evidence indicating that in 2000, the [REDACTED] required outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Furthermore, the petitioner has failed to provide evidence on membership requirements for either the [REDACTED]

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

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. 8 C.F.R. § 204.5(h)(3)(iv).

According to the petitioner's November 23, 2010 personal statement, he was appointed as a judge

The petitioner states that "[t]hese are well known national level competitions within the grain industry of China." Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

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).

According to the petitioner's November 23, 2010 personal statement, he invented the [REDACTED] that "dramatically improved" the grain manufacturing process in China. In his undated letter, [REDACTED] stated that the petitioner also invented [REDACTED]. The petitioner has provided documents from the Intellectual Property Office of China relating the patenting of all three machines.

Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has not met this criterion, because he has not shown that his inventions constitute contributions of major significance in the grain industry. Regarding patents, the AAO has held that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner has made a contribution of major significance in the field through his development of this idea. Although [REDACTED] made the conclusory statement that the petitioner's three machines "greatly advanced grain processing technology in China," the AAO concludes that the conclusory assertion is insufficient to show that the machines constitute contributions of major significance in the field. *See 1756, Inc. v. Attorney General of United States*, 745 F. Supp. 9, (D.C. Dist. 1990). Similarly, the AAO finds that the conclusory statements from China National Association of Grain Sector's Sui

Fengfu that the machines “essentially changed the way of the grain process” insufficient to meet the requirements of this criterion. The petitioner has provided no evidence that companies in the grain industries, other than perhaps his companies, use or intend to use any of the three machines. For example, the record contains no licensing or sales contracts or publications in trade journals discussing how the equipment has revolutionized the grain industry.

The petitioner has also provided an undated letter from [REDACTED] stating that the petitioner’s [REDACTED] “gave grain processors a much more advanced system and it was immediately placed in all major grain companies. It revolutionized this critical stage of food production.” Although the letter mentions the adoption of the machine by “all major grain companies,” the letter fails to provide specific information on the grain companies that use the machine, or any support to conclude that these unnamed grain companies constitute “major grain companies.” The record also lacks sales data, licensing agreements or trade journal coverage on this machine to support [REDACTED] broad statement. Moreover, even if the AAO were to conclude that [REDACTED] constitutes a contribution of major significance in the field, the AAO would find that the petitioner has not met this criterion because 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, a single example of a contribution is insufficient evidence of contributions of major significance in the plural.

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has not met this criterion, because he has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 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).

According to the petitioner’s November 23, 2010 personal statement, he has authored two books that discuss the grain industry in China. One of the books is called [REDACTED] published by [REDACTED]. Counsel asserts that the second book is entitled [REDACTED] but the petitioner has provided no information on this second book. Also, the petitioner’s statement is inconsistent with counsel’s statement filed in response to the director’s Request for Evidence (RFE), and the November 19, 2010 letter from [REDACTED] in which [REDACTED] stated that the petitioner published one book.

Even if the petitioner did publish a second book, the AAO, without any information on the second book, would conclude that the petitioner has not shown that his second book constitutes a scholarly article in the grain industry or that it was published in a professional or major trade publication or

other major media. As such, even if the AAO were to find that the petitioner's "Research on Regional Cooperation in Northeast Asia under Globalization" constitutes a scholarly article, the AAO would nonetheless find that the petitioner has not met this criterion because the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of qualifying scholarly articles in the plural. This is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act.

Accordingly, based on the evidence in the record, the AAO disagrees with the director and concludes that the petitioner has not met this criterion, because he has not presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. See 8 C.F.R. § 204.5(h)(3)(vi).

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).

In counsel's December 31, 2010 response to the director's RFE, counsel asserted that the evidence shows the petitioner's "executive leadership of his two companies and the highly influential role his companies play in the grain industry in China." Counsel also submitted evidence of the petitioner's roles for the companies. Although the record contains evidence on the companies' purported awards, it lacks specific information relating to the companies that received the awards. Moreover, on appeal, the petitioner has not continued to assert that the petitioner meets the leading or critical role criterion, and no arguments were made on this issue in counsel's 25-page brief filed in support of the appeal. As such, 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 that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has not met this criterion. First, as noted by the director, the petitioner has not shown that the article "Top Executive Pay and Firm Performance in China" is an authoritative treatise or reliable reference to establish top executives' salary in China. Although counsel asserts that the authors of the article are from highly ranked universities and business schools, counsel has provided insufficient evidence on the reliability of the information contained in the article.

Second, the article does not specifically focus on the petitioner's field, which is the grain industry. Rather, the article discusses executives' salary in China across many fields. The article also does not contain salary data from the relevant years, as it only discusses data from 1998 to 2002. The evidence provided by the petitioner, however, pertains to his salary from 2009 to 2010. As such, the AAO concludes that the article fails to support a finding that the petitioner's 2009 and 2010 salary is indicative that he has commanded a high salary or other significantly high remuneration for services in relation to others in his field.

Third, although the petitioner provided an online printout from hlj.lss.gov.cn, he has not provided any information as to the reliability of the information retrieved from the website. Also, the salary level index is limited to the "Heilongjiang Province [sic]," and relates to both the food and oil industry, without specific information on the grain industry. As such, the AAO concludes that the online printout fails to support a finding that the petitioner's 2009 and 2010 salary is indicative that he has commanded a high salary or other significantly high remuneration for services in relation to others in his field.

Finally, evidence of the average wage in an occupation does not demonstrate what a high wage is in that occupation. Merely documenting wages above the average wage in the occupation is insufficient evidence under the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary in relation to others in the field.

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting 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 have risen to the very top of the field of endeavor.

Even if the petitioner had 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.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3). *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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ 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).