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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: **MAR 30 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on August 16, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.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." *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.*

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 8 C.F.R. § 204.5(h)(3)(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.

On appeal, counsel claims the petitioner's eligibility for this criterion based on her receipt of the [REDACTED] in 2005 and the [REDACTED] [REDACTED] in 1988. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

Regarding the [REDACTED], the petitioner submitted a certificate reflecting her receipt of the award from the [REDACTED] in 2005. However, the petitioner failed to submit any documentary evidence establishing that the award is nationally or internationally recognized for excellence in the field. Even though counsel claimed on appeal that an article, dated October 4, 2002, in the *Financial Mail* entitled, [REDACTED] discussed the petitioner's receipt of the award, a review of the article reflects a reference to the petitioner's receipt of the [REDACTED] from the [REDACTED] rather than the [REDACTED] from the [REDACTED]. Moreover, as the article was published in 2002 and the petitioner did not receive the [REDACTED] until 2005, it is impossible that the article discussed the petitioner's receipt of the [REDACTED]. The unsupported statements of counsel on appeal or in a motion 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). The AAO must look to the plain language of the documents executed by the petitioner and not to subsequent statements of counsel. *Matter of Izummi*, 22 I&N Dec. 169, 185 (Comm'r 1998). Merely submitting evidence of the petitioner's receipt of a prize or award is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) without documentary evidence reflecting that the prize or award is nationally or internationally recognized for excellence in the field of endeavor.

Regarding the [REDACTED] the petitioner submitted sufficient documentary evidence demonstrating that it qualifies as a lesser nationally recognized award for excellence in the field of endeavor. However, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires more than one nationally or internationally recognized prize or award for excellence in the field.

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

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

Accordingly, the petitioner failed to establish that she meets 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

On appeal, counsel claims the petitioner’s eligibility for this criterion based on the following documentation:

1. An article entitled, [REDACTED] March 2009, by Juliet Pitman, *Entrepreneur*;
2. An article entitled, [REDACTED] November 1987, unidentified author, *Inside South Africa*;

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

3. An article entitled, [REDACTED] unidentified date, by Donna Collins, *The Citizen*;
4. An article entitled, [REDACTED] unidentified date, unidentified author, unidentified publication;
5. An article entitled, [REDACTED] May 7, 1989, by Jennifer Crwys-Williams, unidentified publication;
6. An article entitled, [REDACTED] August 12, 1990, by Jennifer Crwys-Williams, unidentified publication;
7. An article entitled, [REDACTED] August 2005, unidentified author, *Finance Week*;
8. An article entitled, [REDACTED] April 2, 1999, by Linda Stafford, *Financial Mail*;
9. An untitled document, unidentified date, unidentified author, unidentified publication; and
10. A photograph of the petitioner from the table of contents from *Professional Marketing Review*, September 1992.

Regarding item 1, the article reflects an interview with the petitioner in which her answers are simply recorded in the submitted material. The author does not discuss the petitioner, and the material does not qualify as published material about the petitioner relating to her work. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “in professional or major trade publications or other major media.” While the petitioner submitted self-promotional material from www.entrepreneurmag.co.za, the petitioner failed to submit any independent, objective evidence establishing that *Entrepreneur* is a professional or major trade publication or other major media. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA 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).

Regarding item 2, the petitioner failed to include the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Although the article reflects published material about the petitioner relating to her work, the petitioner failed to submit any documentary evidence demonstrating that *Inside South Africa* is a professional or major trade publication or other major media.

Regarding item 3, the petitioner failed to include the date of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). A review of the article reflects published material about the petitioner relating to her work. However, the petitioner failed to establish that *The Citizen* is a professional or major trade publication or other major media. A review of the record of proceeding reflects that the petitioner submitted a screenshot from *Wikipedia* regarding background information about the tabloid. As there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).⁴ Moreover, the petitioner submitted a document entitled, “Quarterly Newspapers Circulation” for the period of April – June 2008. However, the petitioner failed to identify the source of the information. Regardless, the document reflects that *The Citizen’s* average circulation was 70,563. When compared to the circulation statistics of daily publications for the *Daily Sun* of 511,087 from the same document, the AAO is not persuaded that *The Citizen* is a professional or major trade publication or other major media.

Regarding item 4, the petitioner failed to include the date and author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, a review of the article fails to reflect published material about the petitioner relating to her work. In fact, the article is about Tourism Investment Corporation (Tourvest). Although the petitioner is mentioned as the CEO, the article is about Tourvest. Articles that are not about the petitioner do not meet this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In addition, counsel indicated that the article was from “Survey: Tourvest.” However, it appears that the article appeared in the “Survey” section of an unidentified publication that was about Tourvest. There is no documentary evidence reflecting that “Survey: Tourvest” is a publication, let alone a professional or major trade publication or other major media. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. at 188-89 n.6. The AAO must look to the plain language of the documents executed by the petitioner and not to subsequent statements of counsel. *Matter of Izummi*, 22 I&N Dec. at 185.

⁴ See also the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on March 20, 2012, and copy incorporated into the record of proceeding 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.

Regarding items 5 and 6, the articles do not reflect published material about the petitioner relating to her work “*in the field for which classification is sought.*” The petitioner is seeking classification as an executive marketing director in the car rental and tourism field. While the articles are about the petitioner, they relate to her house and lunch in a restaurant. The articles are not about the petitioner relating to her work as an executive marketing director in the car rental and tourism field. Moreover, while counsel indicated that the articles appeared in a purported publication entitled “Sunday,” there is no documentary evidence indicating that “Sunday” is an actual publication, let alone that it is a professional or major trade publication or other major media. It is noted that each article indicated that they were published on Sunday, May 7, 1989, and Sunday, August 12, 1990. It appears that counsel’s claim of “Sunday” relates to the day of the week that they were published rather than the name of the publication. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6. The AAO must look to the plain language of the documents executed by the petitioner and not to subsequent statements of counsel. *Matter of Izummi*, 22 I&N Dec. at 185.

Regarding item 7, the petitioner failed to include the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, a review of the article fails to reflect published material about the petitioner relating to her work. Instead, the article is about the role of women in the chartered accountancy profession. Although the petitioner is briefly mentioned one time in the article, the fact remains that the article is not about the petitioner relating to her work. In addition, the petitioner failed to submit any documentary evidence demonstrating that *Finance Week* is a professional or major trade publication or other major media.

Regarding item 8, a review of the article reflects published material about the petitioner relating to her work. While the petitioner submitted self-promotional material from <http://free.financialmail.co.za>, the petitioner failed to submit any independent, objective evidence reflecting that *Financial Mail* is a professional or major trade publication or other major media. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA 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).

Regarding item 9, the petitioner failed to include the title, date, and author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, counsel claimed that the document was a press release but failed to submit any documentary evidence establishing that it was published in a professional or major trade publication or other major media. Further, a press release does not constitute published material as it is not independent, journalistic coverage of the petitioner relating to her work.

Regarding item 10, notwithstanding that the photograph of the petitioner in the table of contents of a publication does not contain a title, date, and author, a photograph is not published material about the petitioner relating to her work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The AAO notes that according to the table of contents, there was an article entitled, “Marketing Giants,” by Dorothy Watkins on page three. However, the petitioner failed to submit the article. Simply submitting the table of contents is insufficient to establish published

material about the petitioner relating to her work. Moreover, the petitioner failed to submit any documentary evidence establishing that *Professional Marketing Review* is a professional or major trade publication or other major media.

As evidenced above, the majority of the petitioner's documentary evidence failed to comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring "the title, date, and author of the material." While the petitioner submitted some documentation reflecting published material about her relating to her work, the petitioner failed to establish that the material was published in professional or major trade publications or other major media. The burden is on the petitioner to establish every element of this criterion.

Accordingly, the petitioner failed to establish that she meets this criterion.

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.

On appeal, counsel claims that the petitioner "meets this criterion as a panelist at the [REDACTED] [REDACTED]. In support of counsel's claims, he refers to a letter from [REDACTED] who stated:

Each year the [REDACTED] approaches past winners of the award to judge the finalists for the following year. These women are approached as they have already proved their success within the corporate world in South Africa. [The petitioner] was *approached* on five occasions to join our panel of judges, which is a rare occurrence and proves just how much value the [REDACTED] placed in her business skills [emphasis added].

In addition, counsel refers to a letter to the petitioner from [REDACTED] [REDACTED] who thanked the petitioner "for *agreeing* to judge this prestigious award on 5 July 2005 [emphasis added]."

As the plain language of the regulation requires "the alien's participation . . . as the judge of the work of others," the mere request to serve as a judge, or even agreeing to judge, without evidence of actually judging the work of others is insufficient to meet the plain language of this regulatory criterion. In fact, there is no evidence establishing that the petitioner actually served on the panel of judges for the [REDACTED]

For the reasons discussed above, the petitioner failed to demonstrate that she served as a judge of the work of others in the same or an allied field of specification for which classification is sought consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner failed to establish that she meets this criterion.

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

On appeal, counsel claims the petitioner's eligibility for this criterion based on the petitioner's role with [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence reflecting that she minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner established that she meets 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." In other words, the petitioner must not only submit evidence of her salary but also submit evidence that her salary is high when compared to others in the field. A review of the record of proceeding reflects that the petitioner submitted a letter from [REDACTED] who stated that the petitioner's "salary package (that is total cost to company) for the year ended 30 June 2006 was R4,435,990 (four million, four hundred and thirty five thousand nine hundred and ninety rand)."

The petitioner failed to submit primary evidence of her salary at Imperial. 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. In this case, while the petitioner submitted a job letter, the petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, [REDACTED] letter is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signer, in signing the statement, certify the truth of the statement, under penalty of perjury. 28 U.S.C. § 1746. As the petitioner failed to comply with the regulation at 8 C.F.R. 103.2(b)(2)(i), she failed to demonstrate her commanded salary at Imperial.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that the petitioner commands a high salary "in relation to others in the field." Nevertheless, the petitioner submitted a screenshot from www.hsrc.ac.za reflecting that the average annual income package for "[c]hief executive, managing director (private sector)" in 1997 in South Africa was R478,000.

Notwithstanding that the screenshot reflected average salaries rather than high salaries, the petitioner failed to submit any documentary evidence reflecting her salary in 1997; [REDACTED] letter reflected the petitioner's salary in 2006. Moreover, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that the petitioner commands a high salary "in relation to others in the field," the petitioner failed to submit any documentary evidence comparing the salaries of chief executives in the tourism or car rental field. Similarly, the petitioner submitted the average or median salaries of general chief executives in the United States and Nevada from www.careerinfonet.org and <http://data.bls.gov> rather than evidence of high salaries of other chief executives in her field of expertise.

The petitioner failed to submit the top salaries in her field, so as to compare the petitioner's purported salary to the highest earners. The evidence submitted by the petitioner does not establish that she has commanded a high salary in relation to chief executives in the travel or car rental field. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." Not only did the petitioner fail to demonstrate her salary, she failed to establish that she commanded a high salary when compared to others in her field.

Accordingly, the petitioner failed to establish that she meets this criterion.

B. 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.

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.⁵ 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁵ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. 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).