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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 14 2012** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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 F. Hew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

I. LAW

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 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.

While counsel asserts that “[t]he reviewing officer misinterprets *Kazarian*” and that “the decision denying [the] application is contrary to regulation, unjust, and erroneous,” counsel’s assertions are not persuasive. First, counsel relies on *Buletini v. INS*, 860 F. Supp. 1234 (E.D. Mich. 1994) for the proposition that submission of evidence under three criteria alone is sufficient to establish eligibility. Notably, the court in *Buletini* did not reject the concept of evaluating the quality of the evidence at any time. The *Buletini* court held, as the *Kazarian* court did, that it is an abuse of discretion to deviate from the criteria of its own regulation. *Buletini*, 860 F. Supp. at 1234. The court continued:

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).

Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in 8 C.F.R. § 204.5(h)(3), the alien must be deemed to have extraordinary ability *unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.*

Id. (Emphasis added.) As is clear from the italicized language, the *Buletini* court considered the possibility that an alien can submit evidence satisfying three criteria and still not meet the extraordinary ability standard provided legacy INS explains its reasoning.

Counsel also references *Muni v. INS*, 891 F. Supp. 440, 445-46 (N.D. Ill. 1995). In that case, the court included a final section entitled "Totality of the Evidence" in which it evaluated whether the evidence submitted established national or international acclaim. The court expressly stated: "While the satisfaction of the three-category production requirement does not mandate a finding that the petitioner has sustained national or international acclaim and recognition in his field, it is certainly a start." *Muni*, 891 F. Supp. at 445-46. The court went on to fault legacy INS for failing to articulate why the evidence did not establish such acclaim. The AAO concurs that if an alien meets at least three of the initial criteria, then USCIS must set forth specific and substantiated reasons for finding that the alien does not meet the extraordinary ability standard. This must be done within the context of a final merits determination.

In *Buletini*, the court also acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini*, 860 F. Supp. at 1234. Regardless, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Ultimately, the subsequent reasoning of a circuit court decision outweighs the reasoning of an earlier district court decision. Significantly, the *Kazarian* court cited *Buletini* for the nature of the alien's achievements in that case. Thus, the *Kazarian* court was aware of the decision in *Buletini* and still set forth a two-step procedure.

Second, the *Kazarian* court did, in fact, provide two examples of how evidence might be considered under a final merits determination. For example, the court accepted that the AAO's analysis of the strictly internal nature of the alien's judging experience "might be relevant to a final merits determination." *Kazarian*, 596 F.3d at 1122. In addition, the court accepted that whether an author's articles have garnered citations in the field "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." The court felt compelled to acknowledge the AAO's concerns in that case and expressly stated that they were legitimate concerns, but should have been addressed separately after counting the evidence.

Significantly, the final merits discussion appears in the majority opinion and is a necessary corollary to the majority's discussion of how USCIS should consider evidence under the regulatory criteria. In other words, the court's conclusion that USCIS cannot raise certain concerns when counting the evidence is predicated on the understanding that USCIS can do so at a later stage. To apply only half of the court's procedure would effectively negate USCIS' ability to consider the quality of the evidence at any stage. Such an outcome is untenable, contradicts the understanding in *Buletini* that the quality of the evidence is relevant and would undermine the statutory standard of national or international acclaim. Notably, as stated above, the *Kazarian* court cited *Lee v. Ziglar*, 237 F. Supp. 2d at 918 for the proposition that the classification is extremely restrictive. *Kazarian*, 596 F.3d at 1120.

For the reasons discussed above, the AAO considers the final merits determination step discussed in *Kazarian* not only persuasive, but necessary to understanding the court's decision as a whole.

While the director concluded that the petitioner met at least three of the ten regulatory categories of evidence, the AAO finds that the petitioner met only two of the criteria. However, because the director used a final merits determination as the basis for denial, the AAO will review the director's findings as well.

II. ANALYSIS

A. Prior O-1

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

The regulation at 8 C.F.R. § 214.2(o) includes aliens who have a demonstrated record of extraordinary achievement in the motion picture or television industry. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary achievement as "a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television industry." The regulatory criteria for meeting this definition are set forth at 8 C.F.R. § 214.2(o)(3)(v) and differ from those relating to the immigration classification now sought discussed below. As such, that the petitioner obtained nonimmigrant status as an alien with a demonstrated record of extraordinary achievement in the motion picture or television industry is not determinative.

B. Evidentiary Criteria²

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.

The director discussed the petitioner's single membership in a labor union and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Upon review of the evidence, the AAO concurs with the director's conclusion in this regard.

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

The director found that the petitioner satisfied the plain language requirements of the regulation at § 204.5(h)(3)(iii) and the AAO concurs with that finding.

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

The director found that the petitioner satisfied the plain language requirements of the regulation at § 204.5(h)(3)(iv) and the AAO concurs with that finding.

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

The record contains a number of letters of recommendation filed with the initial petition, in response to the director's request for evidence and with the appeal. On appeal, counsel asserts that the letters of recommendation "are objective testimonial evidence," referring to them as "expert letters" that "provide a critical insight to understand the nature and significance of the contributions." Although counsel has never asserted a claim under 8 C.F.R. § 204.5(h)(3)(v), the AAO will evaluate the letters under this criterion.

It should be noted that, on appeal, counsel asserts that "the Disney letter itself, issued by [REDACTED] was not even considered." In response to the director's request for evidence, the petitioner submitted a letter which served to confirm the petitioner's role on the Disney television show and falls under the criterion at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the petitioner submitted a new letter to clarify that the petitioner's role included acting skills, not just hosting skills. These letters will be addressed under 8 C.F.R. § 204.5(h)(3)(viii). The AAO will not

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

presume that evidence relating to or even meeting the leading or critical role criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, this letter will not be further considered under this criterion.

According to [REDACTED], an artist and Film Commissioner for The Italian Film Commission, the petitioner has “already risen to a very top level in Italy at his very young age.” [REDACTED] writes “[h]e had already sustained national recognition in Italy.” [REDACTED] who directed the petitioner in a recent movie, states “I believe It [*sic*] is the emotion and passion [the petitioner] puts into his roles that make him stand out above all other actors.” While the petitioner’s colleagues and acquaintances certainly think highly of him, the letters fail to provide concrete examples of the petitioner’s contributions and do not indicate that his contributions are of major significance. Furthermore, there is no evidence to indicate that the letters are written by experts, rather than colleagues and acquaintances.

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

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010).³ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of

³ In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In light of the above, the petitioner has not established that he meets this criterion.

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

The director stated in his denial that "this criterion requires that your work must have been displayed at artistic exhibitions or showcases, and your evidence does not make that showing." On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Upon review of the evidence, the AAO concurs with the director's conclusion in this regard.

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

The director found that the petitioner "performed in a leading host role on a regular series on the Disney Channel." 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." Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion.

While it is clear that Disney has a distinguished reputation, the record does not support the petitioner's claim that he performed in a leading role for them. [REDACTED]

[REDACTED] confirms that the petitioner "represents the Disney Channel Italy" as an actor and host of the Italian version of the [REDACTED]. However, the petitioner failed to submit any evidence to show that the petitioner's role is critical to the [REDACTED] as a whole. The record does not demonstrate the importance to Disney of acting as host of this one television show. Without supporting documentation such as viewership numbers, ratings information, ad revenues, or other comparable evidence, the AAO cannot find that the petitioner has satisfied this criterion.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner's leading or critical role in more than one organization or establishment with a distinguished reputation. 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).

Even if the AAO agreed with the director that the petitioner performed in a leading role for Disney, which the AAO does not, the petitioner only submitted qualifying evidence to demonstrate the distinguished reputation of the Disney Channel. Although the record contains other evidence reflecting his leading roles in other television, theatrical and cinematic productions, the petitioner did not submit any qualifying evidence to indicate whether any of these roles were for an organization or establishment with a distinguished reputation. While the petitioner did submit internet printouts from the *Internet Movie Database* and *Wikipedia* in response to the director’s request for evidence, this is not evidence of a distinguished reputation. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for more than one organization or establishment with a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion. As such, the AAO withdraws the decision of the director for this criterion.

⁴ Online content from *Wikipedia* is subject to the following general disclaimer:

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on May 4, 2012, a copy of which is incorporated into the record of proceeding.

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

In his denial, the director stated: "You submitted evidence that various Disney ventures have experienced commercial success, but you have not submitted evidence that any of that success was directly attributable to you." On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Upon review of the evidence, the AAO concurs with the director's conclusion in this regard.

C. Summary

In light of the above, the petitioner has not satisfied the antecedent regulatory requirement of three types of evidence. However, in accordance with the *Kazarian* opinion, the next step is 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," 8 C.F.R. § 204.5(h)(2); 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)(3). See *Kazarian*, 596 F.3d at 1119-20.

D. Final Merits Determination

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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." 8 C.F.R. § 204.5(h)(2).

The evidence indicates, as stated by the director in her request for evidence, that the petitioner "is a promising actor who has not yet risen to the top level of that field," but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. The AAO concurs with the director's finding in the notice of denial that "the petitioner is pursuing an acting career" but the record lacks evidence that distinguishes the petitioner from other actors working in similar productions.

USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899. In *Matter of Racine*, 1995 WL 153319 at *1, *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.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Likewise, it does not follow that the petitioner, who has not offered any evidence that distinguishes him from other working actors, should necessarily qualify for approval of an extraordinary ability employment-based visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was among that small percentage at the very top of the field of endeavor.

The truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989).

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.

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.