



U.S. Citizenship  
and Immigration  
Services

B2

[REDACTED]

DATE: **OCT 22 2012** Office: NEBRASKA 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, 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 in the arts. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his 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 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, the petitioner submits evidence of published material about him in *Korea Times San Francisco* dated September 3, 2011 and documentation of additional exhibitions where his artwork was on display in 2010 and 2011. For the reasons discussed below, the AAO will uphold the director's decision.

## 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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

---

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

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted a letter from [REDACTED] stating:

Thank you for submitting your application to [REDACTED] Program, and congratulations on passing our portfolio review! We welcome you to join our residency program in the field of digital mediums. Our studio consists of a traditional printmaking studio, electronic media center, art gallery and print archive.

\* \* \*

Our Studio and/or Electronic Media Center Manager will be in contact with you in March, 2006 to do an initial technical review via phone or email. This helps us to know what equipment and processes you will be using during your residency, and also identifies any classes or technical tutoring you may need prior to starting your residency. As an artist-in-residence, you would receive a 20% discount on our classes and tutoring.

We would like you to know that every artist working at [REDACTED] is substantially subsidized by donated and earned income, and that the artist-in-residence fees represent only a small portion of the actual cost of our facilities. Although we are unable to offer you any financial assistance at this time, we hope that you will accept our invitation. Also please note that we do not provide housing services.

The petitioner also submitted "Artist-in-Residence Program" information from the [REDACTED] that states:

Starting out with a dozen artists from seven countries in 1974, [REDACTED] Program has steadily grown to reach its current annual population of approximately seventy-five artists from around the globe.

[REDACTED] encourages artists working in a variety of media that reflect a combination of artistic vision, conceptual creativity and technical skills. (Application guidelines for the Artist-in-Residence Program are available on [REDACTED] website.) Resident artists receive keys to the studio to allow 24-hour, 365-day access to the facilities and equipment in addition to discounts on classes and private tutoring. Works by resident artists are featured in an annual exhibition at the [REDACTED]

---

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

Our electronic media center houses sound and video editing equipment, four large-format digital printers, still and video digital cameras, and an all-new photo shooting studio with 4x5 camera and Northlight lighting system. We also have a black and white darkroom and an exposure room with a photopolymer plate-maker. The printmaking studio includes etching, lithography, monoprinting, screenprint, aquatint, bookbinding, relief, and letterpress equipment.

\* \* \*

Artists working in various printmaking techniques, photo-processes, book arts and digital media including sound/video production can apply to become an Artist-in-Residence at [REDACTED]. This is a studio residency; housing is not provided. [REDACTED] provides clean rags, alcohol, some etching acid, litho supplies, and screenprint frames. Artists provide all other supplies, including paper and ink.

Residency applications are accepted four times per year. Artists who apply for residency should be familiar with at least one of the media offered at [REDACTED]. Considerations for acceptance are conceptual creativity and technical knowledge. [REDACTED] encourages experimental uses of both traditional and new technologies, and their admixture.

On the Form I-290B, the petitioner asserts that his acceptance to the [REDACTED] Artist-in-Residence Program is a nationally recognized award. The AAO is not persuaded that the petitioner's acceptance to a "residency program in the field of digital mediums" constitutes his receipt of a nationally or internationally recognized "prize" or "award" for excellence in the field of endeavor. The AAO notes that competition for the [REDACTED] Artist-in-Residence Program was limited to those who submitted applications to the residency program. Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of nationally or internationally recognized prizes or awards "for excellence in the field of endeavor." There is no documentary evidence demonstrating that the petitioner's selection was contingent on his excellence in the visual arts field. Instead, the preceding information from the [REDACTED] indicates that "considerations for acceptance are conceptual creativity and technical knowledge." Moreover, the petitioner did not submit evidence of the national or international *recognition* of his acceptance to the [REDACTED] program. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's selection was recognized beyond the [REDACTED] and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "nationally or internationally recognized prizes or awards" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. 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 \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*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). Therefore, even if the petitioner were to establish that his acceptance to the █████ residency program meets the elements of this criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the petitioner’s receipt of more than one qualifying prize or award. Accordingly, the petitioner has not established that he meets this regulatory 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 AAO withdraws the director’s finding that the petitioner meets this regulatory criterion. In general, in order for published material to meet this criterion, it must be 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.<sup>3</sup>

The petitioner submitted a November 30, 2008 article in *San Jose Mercury News* entitled “HOLIDAY GIFT GUIDE, Happy Holidays from California, GIFTS THAT WILL MAKE ’EM WISH THEY WERE HERE.” This article is about California-inspired gift ideas and only briefly mentions the petitioner. The published material itself is not about the petitioner. The plain language of the regulation requires that the published material be “about the alien” and “relating to the alien’s work in the field.” It is insufficient that the petitioner be mentioned within published material appearing in one of the three regulatory required publication types. As the regulation does not provide that one may satisfy this criterion by relying on evidence that he or she was simply noted within published material, the published piece itself must be about the person and relating to his or her work in the field for which classification is sought. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The petitioner also submitted a

---

<sup>3</sup> 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.

January 10, 2003 article in the *Chicago Sun-Times* entitled “[REDACTED]” This article, which only briefly mentions the petitioner and incorrectly refers to him as a female (“Her”), is not about the petitioner. Instead, the article is about the “Home Work/s” exhibition of the School of the Art Institute of Chicago at the [REDACTED] Gallery. In response to the director’s request for evidence, the petitioner submitted information from *Wikipedia*, an online encyclopedia, indicating that the *San Jose Mercury News* and the *Chicago Sun-Times* rank eighth and seventeenth, respectively, for daily circulation among newspapers in the United States. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>4</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. Thus, the petitioner has failed to submit reliable documentary evidence establishing that the preceding newspapers qualify as major media.

The petitioner submitted a September 12, 2003 article in the *Naperville Sun* entitled “Home is where the art is,” but the article does not even mention the petitioner. Further, there is no evidence showing that the *Naperville Sun* newspaper is a form of major media.

The petitioner submitted a presentation entitled “[REDACTED]” presented at the J. Paul Getty Museum Symposium, “From Content to Play: Family-Oriented Interactive Spaces in Art and History Museums,” June 4-5, 2005. This six-page presentation, which includes only seven sentences relating to the petitioner’s work, is not about the petitioner. Instead, the presentation is about issues that influence the DuPage Children’s Museum’s “choice of artworks, their interpretation and design of their installation.” Further, the petitioner has not established that the aforementioned symposium “presentation” constitutes “published material” in a professional or major trade publication or some other form of major media.

On appeal, the petitioner submits a September 3, 2011 article about himself in [REDACTED] but there is no circulation evidence showing that this Korean language newspaper qualifies as a form of major media. Further, the September 3, 2011 article in [REDACTED] was published subsequent to the petition’s May 19, 2010 filing date. Eligibility must

---

<sup>4</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on October 3, 2012, copy incorporated into the record of proceeding.

be established at the time of filing. Therefore, the AAO will not consider this article as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

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

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). The director found that the submitted evidence "failed to establish that the petitioner's work has influenced, or been recognized by, others in his field to such a degree that it could be considered contributions of major significance."

On appeal, the petitioner does not specifically claim eligibility for this regulatory criterion or point to specific examples of his original artistic contributions of major significance in the field. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. 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 court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

On appeal, the petitioner submits examples of the display of his work at artistic exhibitions that post-date the May 19, 2010 filing date of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's exhibitions occurring after May 19, 2010 as evidence to establish his eligibility. Regardless, the AAO affirms the director's finding that the petitioner's initial evidence meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

## B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

## C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, “The term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, the AAO does not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

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). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Eng. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a

nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, \*1, \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

### 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.<sup>5</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.

---

<sup>5</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).