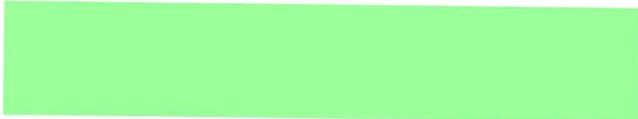


(b)(6)

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



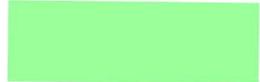
U.S. Citizenship  
and Immigration  
Services



DATE:

Office: TEXAS SERVICE CENTER

FILE:

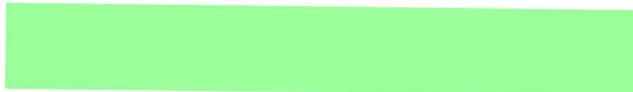


**AUG 06 2013**

IN RE:

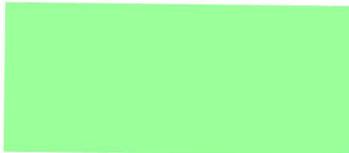
Petitioner:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality 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.

The petitioner’s priority date established by the petition filing date is May 14, 2012. On July 9, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on January 2, 2013. On appeal, the petitioner submits a brief with new documentary evidence. For the reasons discussed below, the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought is consistent with record of proceedings.

## 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.<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.*

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<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 initially claimed eligibility under this criterion. After the director notified the petitioner that her evidence was not sufficient to satisfy this criterion's requirements, she elected to no longer pursue her eligibility under this criterion and provided no rebuttal to the director's RFE. The petitioner also failed to address this criterion on appeal. Therefore, the petitioner has abandoned her claims under this criterion. *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 submitted qualifying evidence under this criterion.

*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.*

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she is a member of more than one association in her field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner's field, who represent the association, render this determination. It is also insufficient for the petitioner to claim that she was admitted to the association because of her outstanding achievements; the petitioner must show that the association requires outstanding achievements of all prospective members. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

In response to the director's RFE, counsel explained that every Colombian scientist is a member of the National System of Science, Technology and Innovation of Colciencias. Counsel further asserted that the petitioner is also a member of two research groups within Colciencias, Environmental Systems and Materials (ESM) and Environmental Management (EM) which counsel characterizes both as "research groups" and "another level of membership."

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

Counsel further asserted that the petitioner's membership "of primary importance" is the Recognized Peer Reviewers Information System (SNCyT), also under the auspices of Colciencias in Colombia. Counsel acknowledged that while Colciencias issues invitations to participate as a peer reviewer, Colciencias does not issue membership certificates. Colciencias, however, did issue a certificate recognizing the petitioner as a peer reviewer that does not use the word "member." In the RFE response, counsel asserted: "[T]he Peer Evaluator/Reviewer System, [is] the senior membership level within Colciencias for which an aspiring member has to qualify to be invited."

The director determined that while the petitioner demonstrated this association required "professional achievements of its members," she failed to establish that this association required outstanding achievements of its members. The director also concluded that the evidence did not establish that national or international experts judged prospective members. The director based his reasoning on the SNCyT bylaws provided within the RFE response. Finally, the director concluded that the petitioner failed to demonstrate eligibility in more than one association as the plain language requirements of this criterion requires membership in associations in the plural. On appeal counsel notes that the director did not discuss two associations noted within the RFE response, ESM and EM. The AAO will address those memberships below.

Regarding SNCyT, the first issue is whether the petitioner has documented that inclusion in this registry of peer reviewers constitutes membership in an association. [REDACTED] Director of [REDACTED] invited the petitioner "to become a member of [REDACTED] exclusive group of" scientists serving as recognized peer reviewers, requesting "permission to include [the petitioner's] name in our selective group of scientists." In the document that counsel characterizes as a certification of membership, [REDACTED] Director of Development Division of Research, asserts only that the petitioner "was recognized as Peer Reviewer" of SNCyT. This evidence does not establish that service as a peer reviewer is a membership in an association. Significantly, the regulations include a separate criterion for service as a judge, including service on a panel. 8 C.F.R. § 204.5(h)(3)(iv). There is no presumption that evidence directly relating to one criterion must also satisfy another criterion. To hold otherwise would undermine the regulatory requirement that a petitioner satisfy three criteria and the statutory requirement for extensive evidence.

Even if the petitioner had established that participation within a group of peer reviewers for an association is a level of membership in that association, and she has not, she has not established that inclusion on the list requires outstanding achievements as judged by recognized national or international experts. While the record before the director did not establish that recognized national or international experts participated in the selection of peer reviewers, on appeal the petitioner submits a letter from [REDACTED] CEO of [REDACTED] and board member of [REDACTED] that resolves this issue. It remains to consider whether Colciencias requires outstanding achievements of its panel of peer reviewers.

On appeal, counsel references the document titled, "General Definitions of the [SNCyT]" that provides the following general minimum requirements to be recognized as a peer reviewer:

- Graduate degree (master or doctorate) or 10 years of research experience or technological innovation;
- Directed on research or technological project or participation in three projects and having scientific production or outcomes associated with projects within the last 10 years;
- Having at least three “products” resulting from the research, scientific or technological development conducted in the last 10 years (these products include research papers, research books, book chapters, patented or registered products/technological processes, products or technological processes not normally covered by patents, standards based on research results, gray literature and other non-certified products, dissertations, participation in graduate programs, and disclosure of a group’s research project results);
- Filling out the resume instrument;
- Filling out the registration box of peer reviewers;
- Fulfillment of the basic conditions of the peer reviewer role.

On appeal, counsel asserts: “[W]e are herewith providing an analysis of the organization’s selection criteria from Dr. [REDACTED] that provides a context and insight into the spirit of these requirements.” Dr. [REDACTED] discusses the requirements for the peer reviewers. Specifically, Dr. [REDACTED] claims that the professional achievements from the document titled, “General Definitions of the [SNCyT],” quoted above, are outstanding achievements in Colombia as it is a developing country. Dr. [REDACTED] analysis that standard achievements within the research field are outstanding in Colombia is not persuasive. While he discusses the rarity of doctoral degrees in engineering in Colombia, he does not similarly assert that master’s degrees are rare among Colombian engineers. Rather, Dr. [REDACTED] asserts that graduate degrees are rare in the Colombian population as a whole. At issue for this criterion are the requirements for membership, not the petitioner’s actual achievements. Moreover, the achievements must be outstanding for the field, not the population as a whole, which of necessity will include the small percentage working in one particular field. Dr. [REDACTED] further asserts that individuals with recognized research experience are rare in Colombia. Once again, however, the issue is how the petitioner compares with other researchers, not the Colombian population as a whole. Finally, the general definitions document further asserts that those “who have no graduate degree or those which, being retired from the activity does [sic] not have research projects or products in the last 10 years may also register their resume and apply for recognition as peer reviewers.” Accordingly, the petitioner has not established that the requirements for inclusion in the registry of peer reviewers are above those achievements commensurate with researchers working in their field.

Regarding ESM and EM, the petitioner only provided evidence that she was part of each research group. The petitioner failed to document that either research group constitutes an association as anticipated by the regulation or a separate level of membership in Colciencias rather than a division that members voluntarily join without restriction according to their interests. Specifically, the bylaws merely discuss the mission of the research groups without implying that nationally or internationally recognized experts select members of the research groups based on their outstanding achievements. Similarly, Mr. [REDACTED] discusses the national databases of research groups, the participant researchers, and the importance of the real time information these databases provide to science policymakers but does not discuss the requirements for participating in these research groups. The evidence of record is

insufficient to demonstrate that either of these entities might serve to qualify the petitioner under this criterion.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of 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.*

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that she meets this criterion.

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

The petitioner initially claimed eligibility under this criterion. After the director notified the petitioner that her evidence was not sufficient to satisfy this criterion's requirements, she elected to no longer pursue her eligibility under this criterion and provided no rebuttal to the director's RFE. The petitioner also failed to address this criterion on appeal. The petitioner has therefore abandoned this criterion. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence 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.*

A leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. The petitioner also has the burden to demonstrate that she actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but

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<sup>3</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on May 14, 2013, a copy of which is incorporated into the record of proceeding.

they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. Finally, the petitioner must document a qualifying role for distinguished organizations or establishments in the plural. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal the petitioner contests the director's adverse determination relating to the [REDACTED] and [REDACTED]. The petitioner asserts that the director failed to acknowledge any of the evidence submitted in response to the RFE and simply repeated the language in the RFE of how the evidence was insufficient. The petitioner also asserts on appeal that she can demonstrate eligibility by showing she performed in a leading or critical role for a division within a university. The leading or the critical role must be performed on behalf of the organization or establishment as a whole rather than for a smaller division of an organization or establishment. See *Noroozi v. Napolitano*, 11 CIV. 8333 PAE, 2012 WL 5510934 \*8 (S.D.N.Y. Nov. 14, 2012). To demonstrate eligibility through a leading or critical role for a division, the petitioner must establish that the division is itself an organization or establishment and that it enjoys its own individual distinguished reputation.

Dr. [REDACTED] President of [REDACTED] indicated that the petitioner was the Director of the Civil and Environmental Engineering programs at [REDACTED]. The petitioner led the effort and achieved national accreditation from the National Ministry of Education of Civil Engineering Program and the same for the Environmental Engineering Program. Based on the facts of the present case, the petitioner has established that her success in these efforts contributed to [REDACTED] attaining accreditation for the overall institution to the extent that her performance sufficiently impacted the organization as a whole.

In support of Dr. [REDACTED] letter, the petitioner submitted accreditation documentation. The accreditation document states: "The accreditation is the act whereby the State approves and publicly announces that the academic peers carried out the verification that an institution achieves the quality of its academic programs, organization, functioning and accomplishment of its social mission, establishing as an instrument to improve the quality of higher education." That [REDACTED] received accreditation is not sufficient to demonstrate the distinguished reputation of this organization.

Dr. [REDACTED] also lists several "medals and distinctions" that [REDACTED] has received, but the record lacks evidence demonstrating that [REDACTED] actually received the claimed accolades and it also lacks evidence of the significance of any of these medals or distinctions. While the petitioner may establish that a university enjoys a distinguished reputation by documenting awards or rankings among similar educational institutions, letters with unsubstantiated and uncorroborated claims that essentially amount to assertions are insufficient by themselves. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). While the petitioner submitted Colombian university integral rankings to show that UdN is ranked fifth, that same document reflects that [REDACTED] is only ranked 32<sup>nd</sup> out

of 80 universities. Without corroborating evidence of the distinctions and their significance, the petitioner has not established the distinguished reputation of [REDACTED]

Through the university's rankings, the petitioner did establish the distinguished reputation of [REDACTED]. The petitioner did not, however, establish that she played a leading or critical role for this university. To establish the significance of her role with [REDACTED] the petitioner relies on a letter from [REDACTED] Director of the [REDACTED] at [REDACTED]. Dr. [REDACTED] explains that [REDACTED] falls under the Engineering Division at [REDACTED] and "leads the environmental discussion in Colombia" through the [REDACTED]. Dr. [REDACTED] asserts that the petitioner's critical role for [REDACTED] was through teaching and developing "specialized international and national courses" and through coordinating the [REDACTED] extension of the [REDACTED]. The petitioner submitted promotional slides to establish IDS' reputation. This evidence does not establish IDS' reputation outside UdN. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (USCIS need not rely on the self-promotional material of a publisher). While the petitioner submitted course curricula for courses she designed and taught, she did not submit any evidence that any other university has adopted these courses as implied by Dr. [REDACTED] or otherwise explain how these courses have impacted [REDACTED] or even [REDACTED] beyond the obvious need for competent professors who prepare curricula for their courses. The petitioner has not established that her role as a professor and coordinator of one extension of one conference constitutes a leading or critical role for [REDACTED] as a whole or even for [REDACTED]. Even if the petitioner had established a leading or critical role for [REDACTED] and that [REDACTED] is its own organization or establishment, she has not established that [REDACTED] individually enjoys a distinguished reputation.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of 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 the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in her occupation performing similar work at the top level of the field.<sup>4</sup> The petitioner must present evidence of objective earnings data showing that she has earned a "high salary" or "significantly high remuneration" in comparison with those performing

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<sup>4</sup> While the AAO acknowledges that a district court's decision is not binding precedent, the AAO notes that in *Racine v. INS*, 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 . . . 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."

similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering 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 petitioner initially provided a letter from Dr. [REDACTED] Vice President of [REDACTED] payroll statements, tax documentation and her employment and special project contracts. Dr. [REDACTED] asserts that the petitioner earned a salary of 56,433 pesos as a professor and an additional salary of 129,000 as a researcher/consultant. The payroll statement for which the petitioner provided an English translation indicates a monthly base salary of 3,677,948 pesos, which annualizes to 44,135,376 pesos. The petitioner's tax documentation indicates that in 2009, she claimed a salary of 56,433,000 pesos and additional remuneration of 129,000,000 pesos in fees, 86,000 pesos in interest, and 727,000 pesos in other income. The petitioner's employment contract for a position as a professor lists a monthly salary of 2,645,000 pesos. The special projects contracts list various percentages of fees that the petitioner was to receive for specific research projects.

The director notified the petitioner that her submitted evidence was not sufficient to demonstrate her eligibility as it failed to compare the petitioner's compensation with others working in her field. In response, the petitioner submitted a letter from [REDACTED] Director of Human Resources at [REDACTED] supported by Colombian regulations and [REDACTED] policy on university salaries. Ms. Navarro asserts that the petitioner's salary was 185,433,000 pesos in 2009, which was "one of the highest salaries among others who are top of her field serving as professor." Dr. [REDACTED] explains that salary is based on education and experience and continues:

[The petitioner could] command a maximum salary per year of \$107,330,400 COP (USD [\$]60,998.77) over his or her salary as a professor. The fact that [the petitioner] commanded USD\$105,386,386.60 demonstrates not only that she was paid significantly higher than other top professors/researchers but that she was reaching the ceiling of the maximum pay attainable by a Professor/Researcher in Colombia.

Ms. [REDACTED] then affirms that only 5.4 percent of the university's employees working as both researchers and professor "may command a significantly higher salary, such as [the petitioner's]." Ms. [REDACTED] concludes that the petitioner's salary was the second highest salary [REDACTED] paid. The supporting Colombian Decree No. [REDACTED] dated April 13, 2009, modifying professors' salaries in Colombia, provides that the fourth level monthly salary for a professor with at Ph.D., like the petitioner in this matter, is 4,203,996 pesos. None of the materials provide data regarding research and consulting fees, the petitioner's other remuneration beyond her salary.

The director determined that comparison with average or median salaries was insufficient, concluding that the petitioner failed to meet the requirements of this criterion. On appeal, counsel asserts that the petitioner previously discussed and documented eligibility under this criterion, including providing

evidence of other salaries in the field for comparison purposes. The petitioner nevertheless provides additional evidence.

On appeal, the petitioner provides a Human Capital Report relating to salaries for those in higher education in Colombia, and testimonial evidence relating to the nature of Colombia's compensation standards. Counsel asserts that the report shows that assistant professors earn a "maximum of 3,435,000" pesos, less than the petitioner earned as an "Assistant Professor," especially when combined with her income as a researcher. The record does not support this assertion. First, the Human Capital Report lists that wage as the third quartile monthly salary, not the maximum monthly salary. Regardless, the petitioner's employment contract lists her position as a professor, not an assistant professor. According to the Human Capital Report, the third quartile monthly income for full professors, tenure track, class B, is 5,376,000 pesos. In addition, Dr. [REDACTED] asserted in her January 21, 2013 letter that the petitioner was a director of an academic program at UTB. The Human Capital Report lists the third quartile monthly salary for a director of an academic program as 4,568,000 pesos. In light of the complete data in the report, the petitioner has not established that her monthly salary as a professor and director of a department, 3,677,948 pesos, falls within even the third quartile for the position she actually held.

Finally, the petitioner has not established that a comparison of her salary as a professor plus her research fees is a useful comparison to professors' salaries alone. The research fees constitute other remuneration. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner must demonstrate that any other remuneration separate from salary is "significantly high." The petitioner has not submitted evidence of research fees in Colombia nationally for comparison purposes. Instead, Ms. [REDACTED] implies that the petitioner earned fees higher than [REDACTED] was allowed to pay, but fails to explain how [REDACTED] was able to pay such fees. Regardless, comparison with fees at one university is insufficient.

Accordingly, the petitioner has not satisfied the plain language requirements of this criterion with probative, relevant evidence.

#### 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a

“level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[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 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<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).