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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 14 2013 Office: TEXAS 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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 in this instance seeks to classify the beneficiary 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), specifically as an Artistic Director. The director determined the petitioner had not established the beneficiary's 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. Counsel asserts for the first time on appeal that the petitioner demonstrated evidence of the beneficiary's lesser national or internationally recognized awards pursuant to 8 C.F.R. § 204.5(h)(3)(i). Counsel also maintains that the director's denial finding that the petitioner failed to establish qualifying evidence under three of the ten regulatory requirements was against the overwhelming evidence in support of the petition. Considering the evidence in the aggregate, the petitioner has not established the beneficiary's eligibility for the benefit sought by a preponderance of the evidence.

I. LAW

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

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

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

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

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

II. ANALYSIS

A. Prior O-1 Visa

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. First, the regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as "a level of expertise indicating that the individual is on of that small percentage who have risen to the very top of the field of endeavor." While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o) does not appear in 8 C.F.R. § 204.5(h). As such, the beneficiary's approval for a non-immigrant visa under the lesser standard of "distinction" is not evidence of his eligibility for the similarly titled immigrant visa. Regardless, each petition must be adjudicated on its own merits under the regulations which apply to the benefit sought. Thus, the beneficiary's eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification, discussed below.

Moreover, 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, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of beneficiary'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 Engg. 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 had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

B. Evidentiary Criteria[2]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The petitioner did not previously assert that the beneficiary meets this criterion. In fact, in response to the director's request for evidence, counsel stated that there "are no awards, as such, in the field." On appeal, the petitioner submitted documentary evidence for the first time relating to eligibility for this regulatory criterion. The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulation at 8 C.F.R. § 204.5(h)(3) notified the petitioner of the specific filing requirements to demonstrate eligibility under the extraordinary ability classification. In addition, the instructions to the Form I-140 petition state that the petitioner "must attach evidence with [the] petition showing that the alien has sustained national or international acclaim" and then lists the ten regulatory criteria. Finally, the director issued a request for evidence listing all of the regulatory criteria. Therefore, the petitioner must claim every criterion that the petitioner would like to be considered before the director. In instances when the petitioner was notified of the types of evidence that are required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766.

If the petitioner would like for USCIS to consider claims to additional eligibility criteria, this must be accomplished through the filing of a new petition. *See id.* at 766. *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and that the Board will not issue a determination on the matter.) Although the AAO maintains *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *Matter of Soriano*, 19 I&N Dec. at 766.

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

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The director concluded that the petitioner did not satisfy this criterion. In support of this criterion, counsel asserted that the beneficiary is a member of the The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The director found that the petitioner failed to establish that outstanding achievement is an essential element for membership. In addition, the director found that the petitioner did not establish that membership to the is judged by recognized national or international experts within their field. On appeal, counsel essentially concedes that the membership to the is insufficient to meet the regulatory language of 8 C.F.R. § 8 C.F.R. § 204.5(h)(3)(ii). In the statement accompanying new evidence, counsel states that membership in the is more general, in contrast to membership in the .

Counsel implies on appeal that the beneficiary is a member of the The petitioner, however, failed to support that claim with any evidence. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506.

Counsel also provided background information on the by submitting copies of pages from the club's website. Finally, counsel submits a letter from the Executive Chairman of the that discusses the distinctions awarded by the club, as well as the requirements for membership. The website pages that counsel submits are in German and while the contents are presented in English in the margins, counsel has failed to submit a translation that complies with the terms of 8 C.F.R. § 103.2(b)(3):

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Therefore, USCIS cannot give weight to the website pages as evidence for this criterion due to the translation deficiencies.

As for letter, only a small portion of the letter is devoted to describing the membership requirements of the club. Specifically, states that membership is by invitation and is open to those "who have an established track record" and must have produced "exemplary work over an extended period of time." USCIS finds that an established track record and exemplary work, while indicative of success in the field, does not rise to the level of "outstanding achievements," as required by the regulatory language. Consequently, the petitioner has failed to

establish that membership in the meets the plain meaning requirements of the regulatory language.

Moreover, even if it was assumed *arguendo*, that the beneficiary's alleged membership in the was sufficient to show membership in an association in the field for which classification is sought, which require outstanding achievements of their members, the petitioner still would fail to satisfy the criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in qualifying associations in the plural, 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)(i) are worded in the plural. For instance, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a singular 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, USCIS 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.[3]

Accordingly, the petitioner has failed to satisfy 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.* 8 C.F.R. § 204.5(h)(3)(iv).

Counsel initially claimed that the beneficiary served as a judge in connection with his membership of the However, as noted earlier, there is no evidence in the record indicating that the beneficiary is a member of the apart from counsel's assertion that he is a member. Such an assertion does not constitute as evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. The record also lacks evidence of judging duties the beneficiary ever performed. On appeal, the petitioner does not raise any assertions or legal arguments relating to this criterion. Consequently, USCIS concludes that the petitioner abandoned this claim. *See Hristov v. Roark,* No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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[3] *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).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director found that the petitioner satisfied this criterion. The evidence of record, however, does not support such a finding. The petitioner submitted numerous letters to demonstrate that the beneficiary met the regulatory language. However, USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989).

As an initial matter, the letters submitted by President of Art Director of Editor-in-Chief of and Vice President of , all discuss their experience of working with the beneficiary over 10 years ago as a designer or a graphic designer, instead of as an Artistic Director, the job title provided on the I-140 visa petition. As for the letter from z, the Head of the while she comments on the volunteer work that the beneficiary performed for her school, as an educator she is not qualified to assess the beneficiary's contributions in the field of advertising. This group of letters, therefore, lacks probative value as evidence for this criterion.

In evaluating the reference letters, USCIS notes that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

One group of letters focuses on the beneficiary's skills and abilities and is comprised of letters from: Managing Director for President of and Founder and CEO of For instance, writes: "[the beneficiary] is a gifted artist and designer . . . [t]his versatility makes him a valued partner for agencies worldwide and a prized colleague who knows how to guide and oversee the work." While the letters are very complimentary and discuss his success in the industry, they do not discuss specific contributions of major significance that impact the field. Creative Director of describes the beneficiary's work as innovative. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, requires not only that the beneficiary's work be original but also of major significance in the field.

In the RFE response, counsel asserts that the focus on "major significance" in the field is problematic because it is unclear how to define the significance of the beneficiary's work beyond the companies and brands for whom he works. The companies and brands represent individual clients, however, and do not represent the field. The beneficiary's role for distinguished companies falls under 8 C.F.R. § 204.5(h)(3)(viii) and cannot create a presumption that the beneficiary also meets this criterion. To hold otherwise would render meaningless the requirement that the beneficiary meet three separate

criteria. While the petitioner finds it a challenge to define "contributions of major significance in the field," the phrase is part of the plain language of the regulations, and as such, the petitioner must comply with the plain language requirement.

The remaining letters are vague and conclusory, comprised of letters from: Associate Director of Curator for the Founder and CEO of , Senior Director of Photographic Agent at CEO of Director of Advertising for Global Marketing Director with Fashion Director at and Account Director at

For example, writes: "[The beneficiary] is highly respected by advertising and fashion executives around the world. His work is constantly evolving and influencing culture and society through freshness and creativity." Similarly, states: "[The beneficiary] is an extraordinary Art Director providing the innovation for some of the world's biggest companies and brands, a fact that places him at the very forefront of the industry." Founder and CEO of characterizes the beneficiary's work as "groundbreaking" and asserts that extraordinary professionals like the beneficiary are "revolutionizing what we consider to be 'art.'" 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).

The above discussion shows that the supporting letters the petitioner submitted as documentary evidence are insufficient because the content is either too vague, fails to discuss contributions, or fails to articulate how a contribution made an impact in the field. Consequently, the AAO withdraws the director's previous finding with regard to this criterion and concludes that the petitioner failed to satisfy the regulatory requirements.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

This criterion anticipates that 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. A critical role should be apparent from the beneficiary's impact on the organization or the establishment's activities. The beneficiary's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural), upon which the beneficiary has performed a leading or critical role, 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."[4] Dictionaries are not of

[4] *See* http://www.merriam-webster.com/dictionary/distinguished, accessed on January 3, 2013.

themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden,* 149 U.S. at 306. 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 a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director, in this instance, concluded that the petitioner satisfied the plain meaning requirements of the regulation. The evidence of the record supports this finding. Consequently, the AAO affirms the director's conclusions in this regard.

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence. In fact, other than advertisements alleged to be the beneficiary's work product, the record almost in its entirety consists of letters attesting to the beneficiary's role for distinguished employers pursuant to 8 C.F.R. §204.5(h)(3)(viii). This evidence does not fall under the definition of a one-time achievement, a major internationally recognized award, and, thus, must be accompanied by evidence relating to two other criteria. 8 C.F.R. § 204.5(h)(3). Counsel implies that USCIS should presume eligibility under other criteria from this evidence by suggesting these employers would only hire someone extraordinary, but nothing in the regulations implies that evidence sufficient to meet 8 C.F.R. § 204.5(h)(3)(viii) is presumptive evidence of meeting any other criterion.

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.

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.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122.

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[5] 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);

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.

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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).