



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 21 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:

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 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 employment-based immigrant visa petition was denied by the Director, Texas 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 as a lawyer.<sup>1</sup> The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that he received a major, internationally recognized award and that he meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (vi) an (viii). 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.

Although not discussed by the director in his decision, the first issue to be addressed is whether the petitioner qualifies for classification as an alien of extraordinary ability based upon his profession as a lawyer.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043

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<sup>1</sup> According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on October 25, 2006 as an F-1 nonimmigrant student.

(E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The statute requires that the alien demonstrate extraordinary ability “in the sciences, arts, education, business, or athletics” and that the alien “seeks to enter the United States to continue work in the area of extraordinary ability.” *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii). On the Form I-140 petition, in Part 5, the petitioner listed his occupation as “Lawyer.” In addition, under Part 6, “Basic information about the proposed employment,” the petitioner listed his job title as “Lawyer” and the nontechnical description of his job as “Practice of Law.”

As evidence that he intends to continue work in this area of expertise, the petitioner submitted the following:

1. An April 9, 2009 certificate stating that the petitioner “was admitted to practice as an Attorney and Counselor of Law, to the United States Court of Appeals for the Federal Circuit” on October 20, 2008;
2. Evidence of the petitioner’s S.J.D. degree;
3. A certificate from the United States District Court, Northern District of Texas stating that the petitioner “was duly admitted and qualified to practice as an Attorney in the District Court on . . . October 14, 2009”;
4. A certificate from the United States District Court, Nebraska stating that the petitioner “was duly admitted and qualified to practice as an Attorney in the District Court” on August 28, 2009;
5. A statement from the petitioner indicating: “The [petitioner] has formed/incorporated his own legal practice, a professional corporation – ‘ [redacted] ’ and has established presences in both the State of New York and the State of California”;
6. A certificate from the State of New York Department of State, [redacted] certifying that “The Law Offices of [redacted] Professional Corporation was filed for in this Department” on July 24, 2009;
7. A certification from the First Deputy Secretary of State, State of New York Department of State certifying that the Law Offices of [redacted] Professional Corporation was filed for on July 24, 2009;
8. A “Certificate of Status” from the State of California Secretary of State reflecting a registration date of August 27, 2009 for the Law Offices of [redacted] Professional Corporation;
9. A letter from the Office of the Clerk, Supreme Court of the United States stating that the petitioner was admitted to the Bar of the Court effective June 4, 2012; and
10. A June 4, 2012 certificate stating that the petitioner was “duly admitted and qualified as an Attorney and Counselor of the Supreme Court of the United States.”

Thus, the record is clear that the petitioner intends to continue to work as a lawyer practicing law in the United States. The petitioner has not established that a lawyer engaged in the practice of law falls within the purview of “the sciences, arts, education, business, or athletics.”

The phrase “in the sciences, arts, education, business, or athletics” is not superfluous and, must be understood to have a specific 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). A qualified alien who is a member of the professions and who holds an advanced degree qualifies for an EB-2 immigrant visa. Section 203(b)(2)(A) of the Act, 8 U.S.C. § 1153(b)(2)(A). The practice of law is a profession for purposes of eligibility for the EB-2 immigrant visa. *Id.* Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The practice of a profession is not one of the fields within the EB-1 category. *Id.* Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). Congress specifically included members of the professions in sections 203(b)(2)(A) and 203(b)(3)(A)(ii), and excluded them from section 203(b)(1)(A). If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase “in the sciences, arts, education, business, or athletics.” As Congress *did* use that phrase, it can be presumed that there may be aliens of extraordinary ability, who enjoy sustained national or international acclaim, that are nevertheless ineligible for classification under section 203(b)(1)(A) *solely* because their occupation does not fall within the sciences, arts, education, business, or athletics. To hold otherwise would render the clear language of the statute meaningless and undermine Congressional intent. The petitioner has not established that his profession and the employment he intends to pursue, fall within the sciences, arts, education, business, or athletics. Therefore, beyond the director’s findings that the petitioner had not established his receipt of a major, internationally recognized award and had not met at least three of the ten categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner has failed to establish his statutory eligibility for this visa classification.

Regarding the findings of the director, 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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> 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>2</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.*

## II. ANALYSIS

### A. One-time Achievement (that is, a major, internationally recognized award)

The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award.

The petitioner submitted an April 7, 2010 e-mail message from [REDACTED] Registration Office, [REDACTED], stating:

I have pleasure in informing you that you are allowed to follow the Directed Studies for the preparation of the Academy Diploma.

In principle, I also accept temporary, your application for the Diploma itself.

However, I will ask the director of studies to give me his/her opinion regard your participation to the Directed studies.

Consequently, the final decision will be taken during your stay at the [REDACTED]

I would like to highlight the difficulty of this examination leading to a high level diploma issued sparingly.

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<sup>2</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).

The petitioner also submitted his identification card for the [REDACTED] reflecting a period of attendance from July 4 – July 24, 2011. In addition, the petitioner submitted a July 2011 document from the [REDACTED] entitled [REDACTED] listing the petitioner as an examination candidate. While the petitioner appears to have been accepted to the [REDACTED] in April 2010, the preceding documentation indicates that he attended the academy subsequent to the petition's May 14, 2010 filing date. Eligibility, however, must be established at the time of filing. 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. Accordingly, the AAO will not consider diplomas or honors received by the petitioner after May 14, 2010 as evidence to establish his eligibility.

The petitioner also submitted information about the history of the [REDACTED] that states:

Since its creation in 1923 with funding received from the [REDACTED] in [REDACTED] has occupied premises at the [REDACTED]. . . . It is a centre for research and teaching in public and private international law, with the aim of further scientific and advanced studies of the legal aspects of international relations.

\* \* \*

The well-known summer courses of the [REDACTED] which have been organised from the very outset, take place over a period of six weeks: three weeks of public international law (in July) and three weeks of private international law (from the end of July until mid-August). Over a period of almost eighty years, thousands of students have been able to attend them.

On the Form I-290B, Notice of Appeal, the petitioner states:

There were totally only eleven nominee [sic] and finalist [sic] worldwide for [REDACTED] Also, since 1950 until today, there have only been 32 Americans and 3 Chinese ever awarded. (Also See Exhibit 1)

Therefore, be a nominee [sic] and finalist worldwide for this famous award should be considered equate [sic] to a major, internationally recognized award.

The petitioner's latter assertion is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3) specifically requires a major, internationally recognized award, not a nomination or qualification as a finalist. The petitioner's appellate "Exhibit 1" lists numerous individuals who were "Awarded diplomas" by the [REDACTED] but the source of the list is

not specifically identified. Regardless, the petitioner's name does not appear on the "Awarded diplomas" list and there is no documentary evidence demonstrating his receipt of an Academy diploma. The petitioner's appellate submission also includes a document entitled "Diploma Regulations" that states:

Article 1

A diploma of the [REDACTED] is awarded to those students who already have a thorough knowledge of international law and pass the examinations referred to below, in accordance with the conditions laid down by these Regulations.

Article 2

Only those candidates appearing on the list drawn up for this purpose under the authority of the Curatorium of the Academy are admitted to sit for the diploma.

Article 3

No person may be listed as a candidate without satisfying both of the following conditions:

- The candidate must have university qualifications or professional experience that, in the opinion of the Curatorium, are sufficient with regard both to the level of studies and to the range of knowledge required for the diploma
- The candidate must also, through academic work or another form of activity, have demonstrated particular knowledge of international law.

Article 4

Candidates must submit to the Secretariat of the Academy in [REDACTED], before March 1st, 0:00 hrs. [REDACTED] time (GMT+1), their application file containing evidence of their qualifications and all other information required above in support of their application.

Article 5

An examination for the diploma is organised at the end of the two periods of courses, in private international law and in public international law. Directed studies are organised during each session with a view to assisting candidates in preparing for the diploma.

Article 6

The examinations consist of a written paper and an oral examination in the language (English or French) chosen by the candidate. Only those candidates who are declared admissible by the jury can sit the oral examination.

Article 7

The written paper, which covers the whole of private international law or public international law, depending upon the session, consists of a five-hour composition of both a theoretical and a practical nature.

Article 8

Candidates who are declared by the jury to be admissible may sit the oral examination. This examination consists of questions covering the whole of private international law or public international law, depending upon the session. It should be noted that candidates from one session must have general knowledge of the subject of the other session. Questions may also relate to the courses that have been given during the session.

#### Article 9

The jury has absolute discretion to determine the relative importance of the various examinations and the number of diplomas that will be awarded. It takes into account the role played by candidates during the seminars. In exceptional cases it may award diplomas "cum laude". Candidates may not enter for the diploma examination more than once.

#### Article 10

The jury, which is established for each period and which includes if possible the lecturer who has given the General Course, must consist of at least four members. These may include the President and members of the Curatorium, the Secretary General of the Academy, the lecturers who have given courses during the session, and any other qualified person whose participation may be considered useful for the proper conduct of the examinations. The jury is presided by the President, the Vice-President or the Secretary General or, in their absence, by a member of the Curatorium. In the event of a tied vote, the president of the jury shall have a casting vote.

Once again, there is no evidence showing that the petitioner had received a diploma of the [REDACTED] at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In addition, there is no evidence showing that the petitioner's candidacy for the diploma was recognized beyond the [REDACTED] at a level commensurate with a major, internationally recognized award. Regarding the information submitted from the [REDACTED] USCIS need not rely on self-promotional material. *Cf., Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The petitioner's selection to attend summer courses at the [REDACTED] is evidence of his pursuit of further educational training in his field, not a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the

example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

In this instance, the petitioner has failed to demonstrate that his participation in summer courses at the [REDACTED] is equivalent to a major, *internationally recognized* award. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

### B. Evidentiary Criteria<sup>3</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 evidence showing that he earned a Doctor of Juridical Science (S.J.D.) degree from [REDACTED]. On appeal, the petitioner states: "As showed by the evidence on the record, average only 93 S.J.D. degrees were awarded per year in the whole United States from 1970 – 2006." A doctoral degree is an academic qualification earned by completing specific advanced educational requirements, not a nationally or internationally recognized prize or award for excellence in the field of endeavor. Academic study is not a field of endeavor, but training for a future field of endeavor. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998). Thus, academic performance is not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

The petitioner's appellate submission includes information about the [REDACTED] S.J.D. program that states:

Once a student is admitted, completion of the Program requires four essential steps. Applicants and admitted students should be aware however, that admission to the Program is not a guarantee that the admitted student will earn the SJD degree. In fact, some admitted students never obtain the degree. Success requires hard work and total commitment on the part of the student. A successful doctoral dissertation demonstrates the candidate's ability to conduct extensive, independent research on a specific topic within his or her chosen field and to present the results of such research in a way that makes a substantive contribution to the field. Originality on the part of the student is

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<sup>3</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, the AAO has not considered whether the petitioner meets the remaining categories of evidence.

imperative. An admitted student who fails to demonstrate satisfactory progress at any stage of the Program can be administratively withdrawn from the Program.

Consideration for the petitioner's S.J.D. degree was limited to students enrolled in the law program at [REDACTED]. Moreover, the petitioner failed to submit evidence demonstrating the national or international *recognition* of his academic accomplishment. 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 S.J.D. degree from [REDACTED] was recognized beyond his alma mater at a level 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 qualifying "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 must conclude 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 S.J.D. degree meets the elements of this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of more than one qualifying prize or award.

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

As previously discussed, the petitioner submitted an April 7, 2010 e-mail message from [REDACTED] informing the petitioner that he was "allowed to follow the Directed Studies for the preparation of the Academy Diploma." The petitioner submitted his identification card for the [REDACTED] reflecting a period of attendance from July 4 – July 24, 2011. In addition, the petitioner submitted a July 2011 document from the [REDACTED] entitled

[redacted] listing the petitioner as an examination candidate.

On appeal, the petitioner states:

As showed by the evidence on the record, the [petitioner] is the nominee and finalist for The [redacted]; 2011 High-Level Diploma Award (Public International Law).

There were totally only eleven nominee [sic] and finalist [sic] worldwide for The [redacted] High-Level Diploma Award. Also, since 1950 until today, there have only been [redacted] ever awarded.

While the petitioner appears to have been accepted to the [redacted] in April 2010, the preceding documentation indicates that he attended the academy subsequent to the petition's May 14, 2010 filing date. 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. In addition, there is no documentary evidence showing that the petitioner received a diploma of the [redacted]. Regardless, there is no evidence showing that the petitioner's candidacy for a diploma of the [redacted] equates to membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts.

The petitioner further states:

Please consider all the nominee and finalist together as an "association" and consider be [sic] selected to become a nominee and finalist as a "membership." As demonstrated by the evidence on the record, . . . it is clear that the "association" requires outstanding achievements of their "members" and the "membership" eligibility is judged by recognized national or international experts in their field.

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The evidence . . . should be accepted as "comparable" evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. The regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the

word “shall” in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x).

As previously discussed, the petitioner’s field of endeavor as an attorney does not fall within the purview of section 203(b)(1)(A)(i). However, even if the AAO were to conclude that an alien in this field of endeavor was within the sciences, arts, education, business or athletics, to be successful regarding a comparable evidence argument, the petitioner must establish that eligibility as a lawyer cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). The petitioner has submitted evidence that specifically addressed more than half of the categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The petitioner’s appellate brief does not explain why the regulatory criteria are not readily applicable to his occupation. For instance, the petitioner has not established that his occupation is one in which there are no associations which require outstanding achievements of their members, as judged by recognized national or international experts or that the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix) is not applicable to lawyers.

Even if the petitioner demonstrated that he was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he did not, the petitioner failed to establish that his candidacy for a diploma of the [REDACTED] is *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) that requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” As previously discussed, the petitioner’s appellate submission includes a document entitled “Diploma Regulations” that states:

Article 1

A diploma of the [REDACTED] is awarded to those students who already have a thorough knowledge of international law and pass the examinations referred to below, in accordance with the conditions laid down by these Regulations.

Article 2

Only those candidates appearing on the list drawn up for this purpose under the authority of the Curatorium of the Academy are admitted to sit for the diploma.

Article 3

No person may be listed as a candidate without satisfying both of the following conditions:

- The candidate must have university qualifications or professional experience that, in the opinion of the Curatorium, are sufficient with regard both to the level of studies and to the range of knowledge required for the diploma
- The candidate must also, through academic work or another form of activity, have demonstrated particular knowledge of international law.

Even if the petitioner demonstrated that he had received a diploma of the [REDACTED] at the time of filing, which he has not, the evidence submitted by the petitioner as “comparable,” specifically the petitioner’s candidacy for a diploma of the [REDACTED] is not of the same caliber as that required by the regulation. For instance, having a thorough knowledge of international law and passing required examinations are not commensurate with the “outstanding achievements” required by the regulation. In addition, regarding the petitioner’s candidacy for a diploma of the [REDACTED] the petitioner has not established that having “university qualifications or professional experience that, in the opinion of the Curatorium, are sufficient with regard both to the level of studies and to the range of knowledge required for the diploma” and that demonstrating “through academic work or another form of activity . . . particular knowledge of international law” equate to “outstanding achievements.” The evidence submitted by the petitioner as “comparable,” specifically the petitioner’s candidacy for a diploma of the [REDACTED] is not of the same caliber as that required by the regulation.

The petitioner continues:

Also, as showed by the evidence on the record, the [petitioner] has been invited and continuing serving [sic] on the New York State annual “Outstanding Young Lawyer (OYL) Award” (one winner per year) Selection Committee in the past years.

Please consider the Selection Committee as an “association” and consider be [sic] invited to and continuing serving [sic] on the Selection Committee as a “membership.” As demonstrated by the evidence on the record, the invitation is limited and only open to current Executive Committee members of the New York State Bar Association Young Lawyers Section. In order to become an Executive Committee member, the candidate needs to go through a whole nomination and selection process . . . , which requires outstanding achievements and the eligibility to be judged by recognized national or international experts in their field.

\* \* \*

The evidence . . . should be accepted as “comparable” evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The petitioner submitted an October 25, 2012 e-mail from [REDACTED] stating: “I am currently in the process of working on the call for submissions for the 2013 Outstanding Young Lawyer (OYL) Award, to be presented in January at the NYSBA Annual

Meeting in NYC. I am looking for volunteers to serve on the OYL Selection Committee.” The petitioner also submitted his October 26, 2012 e-mail response to [REDACTED]: “Thank you for the invite. I would be interested in serving on the selection committee again, as I also did last year.” The petitioner’s invitation and acceptance to the OYL Selection Committee post-date the petition’s May 14, 2010 filing date. 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 service on the OYL Selection Committee in 2011 and 2012 as evidence to establish his eligibility. Regardless, there is no evidence showing that the petitioner’s service on the OYL Selection Committee equates to membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts. Moreover, even if the petitioner demonstrated that he was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he clearly did not, the petitioner failed to establish that his service on the OYL Selection Committee is *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, there is no documentary evidence showing that acceptance to the OYL Selection Committee required outstanding achievements as judged recognized national or international experts in the field. The evidence submitted by the petitioner regarding the petitioner’s service on the OYL Selection Committee as being comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) is not commensurate with the plain language of the regulation.

The petitioner further states:

The [petitioner] has been continually invited in the past years to join the prestigious annual “ABA [American Bar Association] Day at the UN [United Nations]” Delegation.

\* \* \*

Please consider the “ABA Day at the UN” Delegation as an “association” and consider be [sic] invited to and being a member of the Delegation as “membership.” As demonstrated by the evidence, it is clear the “association” requires outstanding achievements of their [sic] members and the membership eligibility is judged by recognized national or international experts in their field.

The evidence is “applicable” to meet the criterion, and should be accepted as “comparable” evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The petitioner submits the following:

1. A January 19, 2011 letter from [REDACTED] Chair, Section of International Law, ABA, inviting ABA officers, section chairs, leadership, council participants, and guests “to participate in the annual visit of the leadership of the American Bar Association to the United Nations” (ABA Day at the UN) that took place on April 11, 2011;

2. An April 4, 2011 memorandum to “Members of the ABA Delegation to the United Nations” providing information about ABA Day at the UN scheduled for April 11, 2011;
3. A January 30, 2012 e-mail from [REDACTED] International Projects Coordinator, [REDACTED] stating: “Dear UN Day Invitee – Please find attached a letter from ABA Section of International Law Chair [REDACTED] inviting you to participate in the ABA Day at the United Nations Monday, April 16, 2012. Registration is due by Monday, April 2”;
4. A January 30, 2012 letter from [REDACTED] ABA, inviting ABA officers, section chairs, leadership, board members, council participants, and guests to participate in the ABA Day at the UN that took place on April 16, 2012;
5. An October 29, 2012 e-mail from “ABA International” to the petitioner reminding him to “Save the Date” for ABA Day at the UN on April 29, 2013; and
6. A February 11, 2013 letter from [REDACTED] ABA, inviting ABA officers, section chairs, leadership, board members, council participants, and guests to participate in the ABA Day at the UN that took place on April 29, 2013.

Items 1 – 4 and 6 do not specifically identify the petitioner as a delegation participant or a prospective delegation participant. In addition, the petitioner’s purported selection and participation as a delegate attending ABA Day at the UN in 2011, 2012, and 2013 post-date the petition’s May 14, 2010 filing date. 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 purported membership on the ABA Day at the UN delegation in 2011, 2012, and 2013 as evidence to establish his eligibility. Regardless, there is no evidence showing that the petitioner’s participation in this annual event open to numerous ABA members equates to membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts. Moreover, even if the petitioner demonstrated that he was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he clearly did not, the petitioner failed to establish that his selection for the ABA Day at the UN delegation is *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, there is no documentary evidence showing that participation in the ABA Day at the UN required outstanding achievements as judged recognized national or international experts in the field. Accordingly, the evidence submitted by the petitioner as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) is not of the same caliber as the evidence required by the plain language of the regulation.

In light of the above, 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 petitioner submitted a three-sentence article that he authored in the [REDACTED] issue of the [REDACTED], “a publication of the International Section of the [REDACTED] announcing his intention to publish his doctoral dissertation. This article in the “Member News” section constitutes material written by the petitioner about his own work rather than published material about the petitioner himself. Thus, the article does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Because separate criteria exist for published material about the alien and authorship of scholarly articles, these criteria cannot be viewed as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. The AAO will fully address the petitioner’s authorship of scholarly articles under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi).

The petitioner also submitted an article entitled “ILA 2010” in the [REDACTED] of the [REDACTED]. The six-sentence article, appearing on page 44 in the “Member News” section, comments on the petitioner’s presentation at the 74<sup>th</sup> Biennial Conference of the International Law Association in August 2010. The author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regardless, the preceding article post-dates the petition’s May 14, 2010 filing date. 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 [REDACTED] as evidence to establish the petitioner’s eligibility.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the alien “in professional or major trade publications or other major media” in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to establish that the material in [REDACTED] meets the elements of this regulatory criterion, which he has not, qualifying material limited to only one publication does not meet the plain language requirements of this regulatory criterion.

In light of the above, the petitioner has not established that he meets this regulatory 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 petitioner submitted evidence showing that he judged the [REDACTED] round of the ABA Law Student Division National Appellate Advocacy Competition in March 2010. Accordingly, petitioner has established that he meets the plain language requirements of this regulatory criterion.

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

The director 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 scholarly 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.*, at 31 quoted in *APWU v. Potter* at 626.

On appeal, the petitioner asserts that his “receipt of a S.J.D. degree itself . . . proved his significant original contribution to the field of law.” As previously discussed, the petitioner’s appellate submission includes information about the [REDACTED] S.J.D. program that states:

A successful doctoral dissertation demonstrates the candidate's ability to conduct extensive, independent research on a specific topic within his or her chosen field and to present the results of such research in a way that makes a substantive contribution to the field. Originality on the part of the student is imperative.

The AAO cannot conclude that a “substantive contribution to the field” rises to the level of a “contribution of major significance in the field.” In this instance, there is no documentary evidence showing that the petitioner’s original work was of major significance to the field.

The petitioner points to the aforementioned articles in [REDACTED] and the presentation of his research work at the [REDACTED] Biennial Conference of the International Law Association in August [REDACTED] as evidence that supports his eligibility. The article in the Winter [REDACTED] and the petitioner’s presentation at the [REDACTED] Biennial Conference of the International Law Association in [REDACTED] post-date the petition’s May 14, 2010 filing date. Once again, 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 Winter 2010 article and the August 2010 presentation as evidence to establish the petitioner’s eligibility.

There is no documentary evidence showing that the petitioner’s S.J.D. research has been heavily cited by independent legal scholars, of major influence in the field of international law, or otherwise indicative of scholarly contributions of major significance in the field. While the petitioner’s S.J.D. research was no doubt of some value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scholarly community. Any S.J.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every legal scholar who performs original research that adds to the general pool of knowledge has inherently made a contribution of “major significance” to the field as a whole. Publications and presentations are not sufficient evidence

under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d at 1036. In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation. Without additional, specific evidence showing that the petitioner’s original work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

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

As previously discussed, the petitioner submitted a three-sentence “Member News” article that he authored in the [REDACTED] announcing his intention to publish his doctoral dissertation. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of *scholarly* articles in the field.” [Emphasis added.] Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, the record lacks evidence demonstrating that the petitioner’s “Member News” announcement was peer-reviewed, contains any references to sources, or otherwise equates to a “scholarly” article. In addition, the petitioner’s appellate brief does not assert that his Winter [REDACTED] the elements of this criterion. 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) (plaintiff’s claims found to be abandoned as he failed to raise them on appeal to the AAO).

In response to the director’s request for evidence, the petitioner submitted three scholarly articles that he authored in [REDACTED]

[REDACTED] The preceding articles were published subsequent to the petition’s May 14, 2010 filing date. 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 at 49. Accordingly, the AAO will not consider scholarly articles published by the petitioner after May 14, 2010 as evidence to establish his eligibility.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires authorship of scholarly articles “in professional or major trade publications or other major media” in the plural. Once again, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to establish that his three-sentence announcement in the [REDACTED] meets the elements of this regulatory criterion, which he has not, qualifying material limited to only one publication does not meet the plain language requirements of this regulatory criterion.

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

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

On appeal, the petitioner asserts that he has performed in a leading or critical role for the American Bar Association (ABA) and the New York City Bar Association (NYCBA). The record adequately demonstrates that the ABA and the NYCBA have a distinguished reputation. The next issue to be determined is whether the petitioner has performed in a leading or critical role for the ABA and NYCBA. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization.

The petitioner asserts that he is a Council Member and Young Lawyers Division Representative for the ABA's Section of International Law. With regard to his role for the ABA, the petitioner submitted the following:

1. A June 11, 2009 letter from the [REDACTED] inviting the petitioner as an ABA member "to participate in the United Nations Conference on the World Financial and Economic Crisis and its Impact on Development" (June 24 – 26, 2009) and to make presentations at the Civil Society Forum;
2. A November 2, 2009 letter from [REDACTED] American Bar Association, stating: "Please be advised that [the petitioner] would like to represent the American Bar Association as an observer at the United Nations Dialogue on Financing for Development conference being held on November 23-24, 2009 at the United Nations in New York City";
3. A November 2, 2009 letter from [REDACTED]: stating: "Please be advised that [the petitioner] would like to represent the American Bar Association as an observer at the U.N. Security Council – 'Open Debates' Meeting on the topic of the Protection of Civilians in Armed Conflict being held on November 11, 2009 at the United Nations in New York City"; and
4. A directory identifying the petitioner as the "[REDACTED]" for the ABA's Section of International Law.

There is no evidence showing that the petitioner's participation in the United Nations "Conference on the World Financial and Economic Crisis and its Impact on Development," his representation of the ABA "as an observer" at United Nation's meetings, and his role as a Council Member and [REDACTED] for the ABA's Section of International Law was leading or critical to the ABA as a whole. In addition, with regard to the petitioner's role as a Council Member and [REDACTED] (item 4 above) for the ABA's Section of International Law, there is no evidence demonstrating that the petitioner held those appointments at the time of filing the petition on May 14, 2010. 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 roles performed by the petitioner after May 14, 2010 as evidence to establish his eligibility. Moreover, the petitioner failed to submit evidence (such as letters of support from top officers of the ABA) explaining how his role was leading or critical to the association as a whole. While the petitioner submitted a directory for the ABA's Section of International Law, there is no organizational chart or other evidence documenting where the petitioner's position fell within the general hierarchy of the entire ABA. The submitted evidence does not demonstrate how the petitioner's role differentiated him from his section's numerous other council members, division chairs, and liaisons, or from the ABA's executive leadership. The documentation submitted by the petitioner does not differentiate him from the ABA's other officers, delegates, and council members so as to demonstrate his leading role, and fails establish that he was responsible for the ABA's success or standing to a degree consistent with the meaning of "critical role."

Regarding his role for the NYCBA, the petitioner submitted the following:

1. A February 2, 2010 letter from the [REDACTED] requesting a UN Annual Pass for herself "as Chief Administrative Officer," for [REDACTED] as "New York Main Representative," and for the petitioner and two others as "New York Additional Representative";
2. A December 21, 2010 letter from the [REDACTED] requesting a UN Annual Grounds Pass for herself "as Executive Director/Chief Administrative Officer," for [REDACTED] as "New York Main Representative," for [REDACTED] and for the petitioner and two others as "New York Additional Representative";
3. A December 23, 2011 letter from the [REDACTED] requesting a UN Annual Grounds Pass for herself "as Executive Director/Chief Administrative Officer," for [REDACTED] as "New York Main Representative," and for the petitioner and three others as "New York Additional Representative";
4. A document from the United Nations Non-Governmental Organizations (NGOs) Branch providing information about "Observers to the General High-Level Plenary Meetings, 20-22 September 2010" and stating that representatives of NGOs "can be issued a secondary pass with access to the fourth floor balcony viewing gallery in the General Assembly hall";
5. Three "4th Balcony Only" observer passes for the NGO General Assembly Hall dated "20 SEP '10," "24 SEP '11," and "25 SEP '12"; and
6. A December 30, 2010 United Nations identification card.

The three letters from the [REDACTED] (items 1 – 3 above) fail to explain how petitioner's role as one of multiple "additional representatives" of the NYCBA at a small number of United Nations meetings was leading or critical to the NYCBA as a whole. In addition, with regard to items 2 – 6 above, this evidence post-dates the filing of the petition. Once again, 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 these items as evidence to establish the petitioner's eligibility. The documentation submitted by the petitioner does not differentiate him from the NYCBA's other officers and representatives so as to

demonstrate his leading role, and fails establish that he was responsible for the NYCBA's success or standing to a degree consistent with the meaning of "critical role."

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

### C. Summary

The petitioner has not demonstrated his receipt of a major, internationally recognized award, and has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>4</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.

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<sup>4</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).