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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 10 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]
BENEFICIARY: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, effectively issued the denial of the employment-based immigrant visa petition on October 17, 2012. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on November 15, 2012. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). In her February 16, 2011 letter, initially filed in support of the petition, the petitioner stated that she is an independent movie director and seeks the classification “on the basis of [her] extraordinary abilities in motion picture production.” The director determined that the petitioner did not establish the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section § 203(b)(1)(A)(i) of the Act; 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)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner submits a two-page statement and a number of documents, including: (1) a December 3, 2012 letter from [REDACTED] an actress and President of [REDACTED] and an online printout relating to Ms. [REDACTED]’s biographical information and filmography; (2) a December 1, 2012 letter from [REDACTED] a film, television and theatre actress and director, and an online printout relating to Ms. [REDACTED]’s filmography; (3) an undated letter from [REDACTED], a film and television actress; (4) an undated letter from [REDACTED] an actor and director, and an online printout relating to Mr. [REDACTED]’s biographical information and filmography; (5) a December 7, 2012 letter from [REDACTED] a film and television producer; (6) photographs from the set of the television show [REDACTED] and promotional material for [REDACTED]; and (7) a November 13, 2012 online article entitled “[REDACTED]”

In part 3 of her Form I-290, Notice of Appeal or Motion, and in her appellate statement, dated December 1, 2012, the petitioner specifically challenged two of the director’s findings: the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i) and the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(iii). In her Form I-290, the petitioner stated that she has “numerous letters of recommendation from industry professionals who recognize [her] not as a talented young filmmaker but also a person with the great potential and artistic future. [She] work[s] as an Assistant Director and a Production Assistant on big film sets where only few lucky [people] get the opportunity to work and learn.” In her appellate

statement, she stated that she is “the only [REDACTED] filmmaker who constantly and successfully works on big American Film and Television projects. [She] successfully competed against seven other candidates and proved that [she is] the best to qualify for the Assistant Director Position at [REDACTED].” On appeal, the petitioner, however, has not specifically challenged the director’s finding on the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v).

For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top of the field and she has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

I. THE 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.

The United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d 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 case, the AAO affirms the director's finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and she has not demonstrated that she is one of the small percentage who are at the very top of the field or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that her achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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 (vi).

² The petitioner does not claim that she meets the regulatory categories of evidence not discussed in this decision.

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 asserts that she meets this criterion. In her December 1, 2012 appellate statement, the petitioner asserts that she is “a young filmmaker, winning two awards at [the] [redacted] and [the] [redacted]” In her February 16, 2011 letter, initially filed in support of the petition, the petitioner claimed that (1) she was “awarded as the ‘Best Director’ at the [redacted] for [her] film [redacted] in 2009” and (2) her “other film – [redacted] won a [redacted] – a major International Film award in the category ‘[redacted]’

The record includes the following supporting evidence: (1) a 2006 [redacted] and naming the petitioner as the director and recipient of the award; (2) an undated and unsigned document relating to the [redacted] (3) a 2009 [redacted] and (4) an undated and unsigned document relating to the [redacted]

Although both film festivals include the word “International” in their name, the petitioner has provided insufficient evidence showing that the awards from the festivals constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor. First, the undated document relating to the [redacted] states that it “is an international film festival based in [redacted]’ and it “is a sister festival of the biggest film festival in [redacted] – [redacted]” The document further provides that the “jury of the short film competition consists of no less than 4 people.”

The mere fact that a film festival might be open to filmmakers from different countries does not render the film festival’s awards nationally or internationally recognized prizes or awards for excellence. At issue is not whether the pool of candidates was national or international but whether the field of endeavor recognizes the awards at the national or international level. Moreover, the petitioner has failed to provide sufficient evidence relating to the competitiveness or prestige of the film festival’s awards. Specifically, the record contains no evidence relating to the number of filmmakers who entered the short film category of the festival in 2006, the criteria under which the petitioner was chosen to be the [redacted] winner, or the expertise of the individuals who chose the petitioner as the winner. Furthermore, the petitioner has failed to show that the undated document about the festival relates to the festival as it was in 2006, when her film [redacted] won the [redacted] Moreover, while the logo for the festival appears on the document, it does not bear any indicia that it derives from the festival’s website or promotional material and no official from the festival signed the document. Finally, the only evidence in the record relating to the significance of the film festival came from the petitioner’s statement and, potentially, the organizer of the festival. Even assuming that the undated document derives from the festival organizer, such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff’d*, 2009 WL 604888 (9th Cir. 2009)

(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 has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the [REDACTED] or its winners in nationally or internationally circulated publications.

Second, the petitioner has failed to show that her [REDACTED] constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor. The undated document relating to the film festival states that the festival's "priority is to support and help young artists and filmmakers. It is the only film festival in Central Asia that promotes and focuses on young talents. Every year approximately 400 applicants are being received; every year festival welcomes around 50 filmmakers from all over the world." The document further states that "around 15 young filmmakers are awarded every year."

As noted, the mere fact that a film festival is open to filmmakers from different countries does not render the film festival's awards nationally or internationally recognized prizes or awards for excellence. At issue is not whether the pool of candidates was national or international but whether the field of endeavor recognizes the awards at the national or international level. Moreover, this film festival is limited in scope to young filmmakers and talents. While an age-limited event may enjoy national or international recognition, it is the petitioner's burden to document that the distinction she received enjoys recognition beyond the organizing entity. The petitioner has not provided sufficient evidence showing that being named the best director in the [REDACTED] category at this particular age-restricted film festival constitutes a nationally or internationally recognized prize or award for excellence. The petitioner has failed to provide sufficient evidence relating to the competitiveness or prestige of her award in the category in which she won. The record contains no evidence relating to the number of filmmakers who entered the [REDACTED] category of the festival [REDACTED] the criteria under which the petitioner received the diploma, or the expertise of the individuals who chose the petitioner as the best director.

Furthermore, the petitioner has failed to show that the undated document about the festival relates to the festival as it was in 2009, when her film '[REDACTED]' earned her the best director award. Moreover, while the logo for the festival appears on the document, it does not bear any indicia that it derives from the festival's website or promotional material and no official from the festival signed the document. Finally, the only evidence in the record relating to the significance of the film festival came from the petitioner's statement and, apparently, the organizer of the festival. As noted, such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO 10. The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the 2009 [REDACTED] or its winners in nationally or internationally circulated publications.

The petitioner has provided letters that reference her awards. Specifically, (1) a letter from Ms. [REDACTED] states that the petitioner "won an award for her short film '[REDACTED]' at the [REDACTED]"

[REDACTED]; (2) an October 10, 2010 letter from [REDACTED] a film and advertisement director, states that the petitioner “became a winner of [REDACTED] and a laureate of [REDACTED] (3) a November 12, 2010 letter from [REDACTED] a film director, states that the petitioner “won some major International Film Festivals awards”; (4) a December 16, 2010 letter from [REDACTED] a film and music video director, states that the petitioner “received several International Awards for her work”; (5) a November 12, 2010 letter from [REDACTED] a movie director, states that the petitioner “was honored to receive [REDACTED] award and was a laureate of [REDACTED] (6) a December 10, 2010 letter from [REDACTED] an executive director and head of advertising and movie department in [REDACTED] states that the petitioner “is already a winner of major [REDACTED]”; and (7) a November 20, 2010 letter from [REDACTED] a senior lecturer at [REDACTED] states that the petitioner “participated in [REDACTED] [REDACTED], and her] short film [REDACTED] won an award.” None of these letters, however, are sufficient to establish that the petitioner’s 2006 and 2009 awards constitute nationally or internationally recognized prizes or awards for excellence. Indeed, these letters provide little to no information relating to the competitiveness, the prestige or the nomination or selection criteria of the awards. The letters also fails to indicate that the field of endeavor recognizes the awards at the national or international level.

In addition, the record contains evidence relating to the petitioner’s receipt of the [REDACTED]. On appeal, the petitioner has not specifically challenged the director’s finding that the scholarship does not constitute a nationally or internationally recognized prize or award for excellence in the field of endeavor. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

In short, the petitioner has not presented documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(i).

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. 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner asserts that she meets this criterion. In her December 1, 2012 appellate statement, the petitioner asserts that “[t]here was an article published about [her] in an influential weekly entertainment magazine [REDACTED]” The record contains an English translation of a January 2011 [REDACTED] article, entitled [REDACTED]” The record also includes an undated and unsigned document about [REDACTED]

The petitioner has not shown that she meets this criterion for the following reasons. First, the petitioner has provided inconsistent evidence relating to the article. The undated and unsigned document about [REDACTED] appears to have been written by the petitioner as it is written in the first-person. Specifically, the document states: “The article about me came out in January 2011 under the title [REDACTED]. The writer is [REDACTED] the editor in chief of [REDACTED].” This information is inconsistent with the certified English translation of the article, which shows the article’s title as [REDACTED] and fails to mention [REDACTED] as the author. Rather, both English translations are in the first person, consistent with the petitioner as the author. The petitioner has provided inconsistent evidence and “it is incumbent upon [her] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Second, the petitioner has not shown that [REDACTED] is a professional or major trade publication or constitutes other major media. It is unclear from the record the source(s) of the information contained in the undated and unsigned document, written in the first-person, about [REDACTED]. As noted, it appears that the petitioner might have authored the document, rather than obtained the document from a reliable source. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Moreover, according to the document, [REDACTED] [was] launched in April 2006 with 10,000 copies. Readers of the magazine are outgoing, socially active, successful and artistically influenced all age groups of people.” This information is insufficient to show that the publication is a professional or major trade publication or constitutes other major media.

Third, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material in professional or major trade publications, in the plural, or other major media, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. Assuming *arguendo* that the 2011 [REDACTED] article constitutes a single example of published material in a qualifying publication or major media, the record lacks evidence of a second example of published material in a qualifying publication or major media.

In addition, the record contains online printouts from www.imdb.com, relating to the petitioner’s filmography. On appeal, the petitioner has not specifically challenged the director’s finding that the online printouts from an online database do not constitute published material in a professional or major trade publication or other major media. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov*, 2011 WL 4711885 at *9.

In short, the petitioner has not presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

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).

In her July 6, 2012 letter filed in response to the director's request for evidence (RFE), the petitioner asserted that she met this criterion. Relying on reference letters, the petitioner claimed that she had provided evidence "of artistic contribution in the field." In his October 5, 2012 decision, the director concluded that the petitioner failed to meet this criterion. On appeal, the petitioner has not specifically challenged the director's finding as relating to this criterion. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov*, 2011 WL 4711885 at *9.

In the alternative, the record fails to include evidence showing that what the petitioner has done constitutes either original contributions, such that she is the first person or one of the first people to have accomplished the tasks. Even assuming that her films are artistically original in that they do not duplicate existing films, originality alone is insufficient. The petitioner must also document that her original work constitutes contributions of major significance in the field. On appeal, the petitioner has submitted additional reference letters. Ms. [REDACTED] stated in her letter that she is "impressed with [the petitioner's] dedication to [the petitioner's] short films that she directed while studying in Film School." Ms. [REDACTED] stated in her letter that the petitioner "is often tapped for the most difficult jobs on [the] set [of the television show 'Smash'] and each time she rises to the occasion" and that the petitioner "will be a huge success in the film industry." Mr. [REDACTED] stated in his letter that he has been "continually impressed by [the petitioner's] resourcefulness, unfailing good humour [sic] and unflinching willingness to work incredibly hard." Ms. [REDACTED] stated in her letter:

Each day[, the petitioner, as a full-time staff member of the television show "Smash,"] orchestrates a routine that flawlessly progresses the performers from one scene to the next or one location to the next or whatever is required that day. Shooting schedules are not a fixed element on any show. They change constantly (weather, illness, equipment malfunction, hostile neighbors . . .) and [the petitioner] is highly skilled and adept at managing these changes. She has a unique insight and intuition that one needs when working on a television production, especially when the slightest mishap can cost the company hundreds of thousands of dollars.

None of the letters submitted on appeal or previously submitted to the director show, or even allege, that the petitioner has done anything that is either original or explain how the petitioner's work has impacted the field as a whole such that her work constitutes contributions of major significance in the field of endeavor. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are

insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).³

In short, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

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

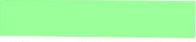
Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that [] 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.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d 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.

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

⁴ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. Dep’t of Justice*, 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* INA §§ 103(a)(1), 204(b); 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).

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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.