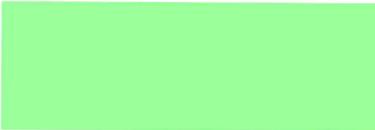


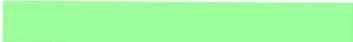


U.S. Citizenship  
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Services

(b)(6)

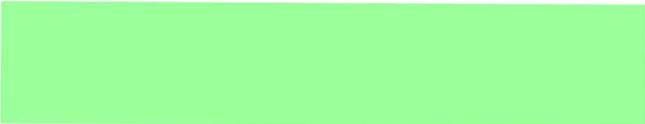


DATE: **MAY 17 2013** Office: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

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

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 rejected. If the petition had been properly filed, the appeal would 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 wine and spirits specialist and enologist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Form I-140, Immigrant Petition for Alien Worker, was electronically submitted to U.S. Citizenship and Immigration Services on December 15, 2011. Part 1 of the Form I-140 identifies [REDACTED] as the petitioner. In Part 8 of Form I-140, under "Petitioner's Signature," counsel signed and certified the petition electronically. Form I-140 was not signed by the petitioner, as required by regulation, but instead by the petitioner's attorney. The only signatures on the form submitted at filing are those of counsel. The regulations do not permit an individual who is not the petitioner to sign Form I-140.

The regulation at 8 C.F.R. § 103.2(a) provides, in part:

*Filing. (1) Preparation and submission.* Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission. . . .

*(2) Signature.* An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

Form I-140 Instructions state:

If the petitioner is an individual, then that individual, or that individual's legal guardian if he or she is incompetent or under 14 years of age, must personally sign the petition. If the petitioner is a corporation or other legal entity, only an individual who is an officer or employee of the entity who has knowledge of the facts alleged in the petition, and who has authority to sign documents on behalf of the entity, may sign the petition.

There is no regulatory provision that waives the signature requirement for a petitioner to designate an attorney or accredited representative to sign the petition on behalf of the petitioner. In this instance, the petition was not properly filed on December 15, 2011 because the petitioner had not signed the petition. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(7)(i), a benefit request which

is not signed must be rejected. In addition, a benefit request which is rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii). While the service center did not reject the initial filing as required by the regulation at 8 C.F.R. § 103.2(a)(7)(i), the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, \*1, \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The regulation at 8 C.F.R. § 103.2(a)(7)(i) is binding on USCIS employees in their administration of the Act, and USCIS employees do not have the authority to ignore it. An agency is not entitled to deference if it fails to follow its own regulations. *See, e.g. Morton v. Ruiz*, 415 U.S. 199 (1974) (Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures); *U.S. v. Heffner*, 420 F.2d 809, (CA 4 1969) (Government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down); *Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C.,1979) (An agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C.,1986) (An agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

On September 17, 2012, the petitioner submitted a new and updated Form I-140 signed by him in response to the director's request for evidence. 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). In addition, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *Id.* at 176. 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.*

Because the underlying petition was not submitted with the petitioner's signature at the time of filing and should have been rejected without retaining a filing date, further action on the petition cannot be pursued, and the appeal must be rejected.

If the petition had been properly filed, the appeal would be dismissed. Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii), (iv), and (viii), but that the petitioner had failed to demonstrate sustained national or international acclaim at the very top of the field.

On appeal, counsel asserts that the petitioner meets three additional regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (v), and (ix) and that the director's final merits determination was in error. The AAO concurs with counsel that the standard of proof is preponderance of the evidence.

The “preponderance of the evidence” standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). The documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that he meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3), that he has achieved sustained national or international acclaim, and that he is one of the small percentage who has risen to the very top of the field of endeavor. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376.

For the reasons discussed below, the AAO will uphold the director’s determination that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, while the AAO affirms the director’s finding that the petitioner has submitted qualifying evidence that meets the plain language of the judge of the work of others criterion pursuant to 8 C.F.R. § 204.5(h)(3)(iv), the AAO withdraws the director’s findings that the petitioner’s evidence meets the published material about the alien criterion and the leading or critical role criterion pursuant to 8 C.F.R. §§ 204.5(h)(3)(iii) and (viii). Accordingly, the petitioner has failed to demonstrate that he satisfies the antecedent regulatory requirement of three types of evidence. Further, as will be explained in the AAO’s final merits determination, the evidence of record fails to demonstrate that the petitioner has sustained national or international acclaim at the very top of the field.

## I. Law

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability”

refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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,” 8 C.F.R. § 204.5(h)(2), and “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)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-20.

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.

On appeal, counsel challenges the director’s final merits determination. Counsel points to *Buletini v. INS*, 860 F. Supp. 1234 (E.D. Mich. 1994) for the proposition that “once a petitioner presents credible evidence to satisfy three of the regulatory criteria, the petitioner has demonstrated by a preponderance of evidence, eligibility for the classification sought.” Counsel also expresses concern that the court did not explain how USCIS should conduct a final merits determination. In addition, counsel notes that the *Kazarian* court “never reached the issue of how the second step in the analysis should be conducted.”

Counsel’s assertions are not persuasive. First, counsel relies on *Buletini* and other earlier court decisions for the proposition that submission of evidence under three criteria alone is sufficient to establish eligibility. Notably, the court in *Buletini* did not reject the concept of evaluating the quality of the evidence at any time. Specifically, the court in *Buletini* acknowledged that “the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria.” *Buletini*, 860 F. Supp. at 1234. The court continued:

Once it is established that the alien’s evidence is sufficient to meet three of the criteria listed in 8 C.F.R. § 204.5(h)(3), the alien must be deemed to have extraordinary ability

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

*unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.*

*Id.* (Emphasis added.) As is clear from the italicized language, the *Buletini* court considered the possibility that an alien can submit evidence satisfying three criteria and still not meet the extraordinary ability standard provided legacy INS explains its reasoning.

Second, the *Kazarian* court did, in fact, provide two examples of how evidence might be considered under a final merits determination. For example, the court accepted that the AAO's analysis of the strictly internal nature of the alien's judging experience "might be relevant to a final merits determination." *Kazarian*, 596 F.3d at 1122. In addition, the court accepted that whether an author's articles have garnered citations in the field "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." The *Kazarian* court acknowledged USCIS' concerns and expressly stated that they were legitimate concerns but should have been addressed separately after counting the evidence.

The final merits discussion that appears in the *Kazarian* decision is a necessary corollary to the majority's discussion of how USCIS should consider evidence under the regulatory criteria. In other words, the court's conclusion that USCIS cannot raise certain concerns when counting the evidence is predicated on the understanding that USCIS can do so at a later stage. To apply only half of the court's procedure would effectively negate USCIS' ability to consider the quality of the evidence at any stage. Such an outcome is untenable and contradicts the understanding in *Buletini* that the quality of the evidence is relevant and would undermine the statutory standard of national or international acclaim. Notably, as stated above, the *Kazarian* court cited *Lee v. Ziglar*, 237 F. Supp. 2d at 918 for the proposition that the classification is extremely restrictive. *Kazarian*, 596 F.3d at 1120.

For the reasons discussed above, the AAO considers the final merits determination step discussed in *Kazarian* not only persuasive but necessary to understanding the court's decision as a whole. Significantly, a recent federal court decision has acknowledged that the *Kazarian* court described a two-step procedure. *Rijal v. USCIS*, 2011 683 F.3d. 1030 (9<sup>th</sup> Cir. 2012).

In this matter, the AAO will apply the two-step analysis dictated by the *Kazarian* court.

## II. Analysis

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

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

The petitioner submitted the following:

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<sup>2</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.

1. A certificate from the [REDACTED] stating: [REDACTED];
2. A certificate from the [REDACTED] stating: [REDACTED];
3. A certificate from the [REDACTED] stating: [REDACTED];
4. A January 21, [REDACTED] certificate from [REDACTED] “awarded to [REDACTED] for its active participation in developing the Russian market”;
5. A gold medal and a certificate from the [REDACTED] stating: [REDACTED] produced by the [REDACTED] distributed by [REDACTED];
6. A certificate from [REDACTED] a Russian website at [REDACTED] focused on [REDACTED] stating: “For *participating* in the award [REDACTED] is awarded to [REDACTED] in the *nomination* for [REDACTED] (emphasis added);
7. A trophy and a certificate from the President of [REDACTED] stating that [REDACTED] received an [REDACTED] for Quality in Customer Satisfaction, Leadership, Innovation and Results according the guidelines established by [REDACTED] and [REDACTED];
8. An October 2011 certificate stating: “[REDACTED] is a participant of the [REDACTED] [REDACTED]”

The preceding awards (items 1 – 8) were received by [REDACTED] and the wine or champagne products that the company distributes, not the petitioner himself. In response to the director’s request for evidence, the petitioner submitted a September 6, 2012 letter from [REDACTED] Chief Financial Officer, [REDACTED] stating that the petitioner “is the Founder of [REDACTED] and that “[h]e has made, and continues to make, all of the important decisions of the company since 1995.” The September 6, 2012 letter from Ms. [REDACTED] consists of three pages stapled together. The second page is completely blank and the font size on page one of Ms. [REDACTED]’s letter is significantly larger than the font size on page three of her letter indicating that her original letter may have been altered. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Counsel asserts that Ms. [REDACTED]’s comments demonstrate the above awards (items 1 – 8) are attributable to the petitioner. Counsel’s assertion is not persuasive. For instance, regarding the [REDACTED] competition awards (items 1 – 3), the petitioner submitted information from the [REDACTED] monthly newspaper indicating that the winning wines and spirits are chosen based on blind “tastings that take place in the competition.” As there is no evidence demonstrating that the petitioner was the maker of [REDACTED]

the AAO cannot conclude the awards for taste are attributable to him. Instead, the awards are attributable to and the The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized prizes or awards, not his company or its products receipt of the awards. It cannot suffice that the petitioner was part of a wine and spirits distribution company that shared collective recognition.

With further regard to items 1 – 3, the petitioner submitted material in entitled

The petitioner also submitted promotional material for the competition entitled “ is pleased to present:

In addition, the petitioner submitted general information about the competition from the website of publisher In regard to item 4, the petitioner submitted information about from its own website. Regarding item 5, the petitioner submitted information about the from the website at

A competition may be open to entrants from throughout a particular country or countries, but this factor alone is not adequate to establish that a specific award from the competition is “nationally or internationally recognized.” The self-serving nature of the preceding information from its publisher, and the website is not sufficient to demonstrate that the petitioner’s awards are nationally or internationally recognized. USCIS need not rely on self-promotional material. *See 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).

With regard to item 6, the petitioner submitted results for the from the website. The submitted results state:

won by . . .” [Emphasis added.] As is not listed on the website as having won the it appears the petitioner’s company only received a “nomination for as indicated on the certificate from (item 6). On appeal, counsel comments on win of the

but the AAO must look to the plain language of the documents submitted by the petitioner and not to subsequent statements of counsel. *See Matter of Izummi*, 22 I&N Dec. at 185. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of receipt of nationally or internationally recognized “prizes or awards,” not receipt of a nomination. Earning a “nomination” for of the does not equate to receipt of a prize or an award. Regardless, the self-serving nature of the information submitted from the website is not sufficient to demonstrate that s honor is a nationally or internationally recognized award for excellence in the field. As previously discussed, USCIS need not rely on self-promotional material.

Regarding item 7, the petitioner submitted an April 2004 article in entitled presented with the There is no circulation evidence showing the specific distribution of magazine. Accordingly, the AAO cannot conclude that coverage in the publication is indicative of national or international

recognition in the petitioner's field of endeavor. The submitted evidence fails to demonstrate that [REDACTED] award is a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In regard to item 8, there is no evidence showing that this certificate equates to a nationally or internationally recognized prize or award, rather than an acknowledgment of [REDACTED] participation in the [REDACTED]

With regard to items 1 – 8, as previously discussed, the awards were received by [REDACTED] and the wine or champagne products that the company distributes, not the petitioner himself. In addition, the petitioner failed to submit objective evidence demonstrating the national or international *recognition* of the awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires the petitioner's receipt of more than one prize or award and that the prizes and awards be nationally or internationally *recognized* in the field of endeavor. It is the petitioner's burden to establish every element of this criterion. There is no documentary evidence demonstrating that items 1 – 8 were recognized beyond the presenting organizations at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, 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.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. 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). Accordingly, the petitioner has not established that he meets this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media.

The petitioner submitted a February 2004 article in the [REDACTED] section of [REDACTED] entitled [REDACTED]. The article is about the author's trip to [REDACTED] not the petitioner. The petitioner is only briefly mentioned in one sentence. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain

language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at \*1, \*9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). In addition, the petitioner submitted information about [REDACTED] from its website and media kit. As previously discussed, USCIS need not rely on self-promotional material. There is no objective documentary evidence showing that the magazine is a major trade publication or some other form of major media.

The petitioner submitted an English language translation of an interview of him that was broadcasted on [REDACTED] on August 5, 2009. The "Summary translation" of the [REDACTED] radio program transcript was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3) which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Further, the summary translation indicates that the interview was about coffee and tea consumption practices in the Middle East and Italy, not the petitioner and his work in the field. In addition, the plain language of this regulatory criterion requires "published material about the alien . . . relating to the alien's work in the field" including "the title, date and author of the material." A radio program interview featuring the petitioner does not meet these requirements. The petitioner also submitted information about the [REDACTED] station from the station's own website. Once again, USCIS need not rely on self-promotional material.

The petitioner submitted a February 2000 article about himself in [REDACTED] entitled [REDACTED] [the petitioner]" that included an interview of the petitioner. The petitioner also submitted a March 2000 article in [REDACTED] entitled [REDACTED]. The latter article is not about the petitioner. Instead, the March 2000 article in [REDACTED] is about [REDACTED] and his champagne. In addition, the petitioner submitted information from [REDACTED] stating that [REDACTED] has a circulation of 31,500. While the petitioner submitted circulation information for [REDACTED] there is no documentary evidence showing the distribution of the magazine relative to other publications to demonstrate that it qualifies as a "major" trade publication or some other form of "major" media.

The petitioner submitted an article in [REDACTED] magazine entitled [REDACTED] but date of the article was not identified as required by the plain language of this regulatory criterion. In addition, the article is not about the petitioner. Instead, the article is about [REDACTED] company's cigar marketing strategies. The petitioner also submitted information about [REDACTED] from its media kit. As previously discussed, USCIS need not rely on self-promotional material. There is no objective documentary evidence showing that [REDACTED] is a major trade publication or some other form of major media.

The petitioner submitted an article about himself in the Summer 2010 issue of [REDACTED] magazine entitled [REDACTED]. The petitioner also submitted information about [REDACTED] from its media kit stating that the magazine has 50,000 readers. Once again, USCIS need not rely on self-promotional material. There is no objective evidence showing the distribution of [REDACTED] relative to

other publications to demonstrate that the magazine qualifies as a major trade publication or some other form of major media.

The petitioner submitted an April 2004 article in [REDACTED] entitled [REDACTED] but 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). Further, there is no evidence showing that [REDACTED] is a major trade publication or some other form of major media.

The petitioner submitted a ten-sentence entry about himself on page 90 of the “First Edition” of [REDACTED] but the author of the petitioner’s entry is not specifically identified. The AAO notes that this business directory includes similar entries for “approximately 600” other Russian businesspersons. In addition, there is no objective evidence showing the distribution of [REDACTED] relative to other publications to demonstrate that it qualifies as a major trade publication or some other form of major media.

The petitioner submitted a brief entry listing his achievements that was posted at [REDACTED] on May 2, 1010, but the author of the material was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted information about [REDACTED] from its own website. As previously discussed, USCIS need not rely on self-promotional material. There is no objective readership information showing that this website is a major trade publication or some other form of major media.

The petitioner submitted a June 2000 article about himself in [REDACTED] magazine entitled [REDACTED]. The petitioner also submitted a document entitled [REDACTED] [the petitioner]” prepared by Mr. [REDACTED]. The submitted document is a compilation of information about four publications [REDACTED] and [REDACTED] purportedly retrieved from [REDACTED] a website with Russian language content. There is no indication that [REDACTED] are one and the same. Rather than submitting actual screenshots from the source website accompanied by certified English language translations, the petitioner appears to have pieced together information from [REDACTED]. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). In addition, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of primary evidence creates a presumption of ineligibility. In this instance, there is no objective documentary evidence showing the distribution of [REDACTED] relative to other publications in the field to demonstrate that the magazine qualifies as a major trade publication or some other form of major media.

The petitioner submitted a 2000 article in [REDACTED] entitled [REDACTED] but 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). In addition, the petitioner is only briefly mentioned in one sentence of the article. Further, as previously discussed, the petitioner submitted the document entitled ‘[REDACTED] [the petitioner]” that includes information

about [REDACTED] purportedly retrieved from [REDACTED]. Rather than submitting screenshots containing information about [REDACTED] that originated directly from [REDACTED] the petitioner instead submitted the information compilation prepared by Mr. [REDACTED]. Again, 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. at 165. The submitted compilation fails to demonstrate that [REDACTED] qualifies as a major trade publication or some other form of major media.

The petitioner submitted a July 2002 article about himself in [REDACTED] entitled “[The petitioner]: [REDACTED]”. The petitioner also submitted an August 2002 article about himself in [REDACTED] entitled “[The petitioner]: [REDACTED]”. Once again, rather than submitting screenshots containing information about [REDACTED] that originated directly from [REDACTED] the petitioner instead submitted the information compilation prepared by Mr. [REDACTED]. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* The submitted compilation fails to demonstrate that [REDACTED] qualify as major trade publications or other major media.

The petitioner submitted an article in [REDACTED] entitled [REDACTED] but the date 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). In addition, there is no circulation evidence showing that [REDACTED] qualifies as a major trade publication or some other form of major media.

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 a letter from [REDACTED] President of the [REDACTED] of Russia, stating:

[The petitioner], a recognized authority in the wine industry, has often been invited and served as jury at various wine-related competitions. [The petitioner] served as a jury at one of the latest bartender competitions, which was held in [REDACTED]. [REDACTED] 2011 was held as part of the [REDACTED]. The competition was held under the patronage of the consumer market administration of the [REDACTED]. The best [REDACTED] bartenders participated in the competition. They came from the cities of [REDACTED].

The petitioner also submitted a letter from [REDACTED] President of the [REDACTED] stating:

Every year, [REDACTED] conducts an all-Russian competition for the title [REDACTED] participated by the Association members from all over Russia. The winners take part in the international [REDACTED]. [The petitioner] has more

than once been a jury member at such contests; he has also sponsored intermediate and final rounds of the competitions.

The above evidence satisfies the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the AAO affirms the director's finding that the petitioner meets 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's decision 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 business-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

On appeal, counsel asserts that the petitioner "was the first to bring [redacted] to the [redacted]. The petitioner submitted a letter from [redacted] Marketing Officer, Economic Section, [redacted] stating:

The [redacted] is delighted to have this opportunity to extend its gratitude to [the petitioner], an extraordinary Enologist, for his huge contribution to the distribution of [redacted]

The [redacted] owned by [the petitioner] was one of the first companies to import wine from [redacted]. He, personally, traveled along the winemaking routes in [redacted] and made the first contract that was crucial to introducing our wines to Russian market. It was the produce of [redacted] which is still being sold in retail and presented in [redacted]

In [redacted] became a partner of the largest [redacted] producer, [redacted]

\* \* \*

According to the data provided by the Customs, [redacted] founded and led by [the petitioner], ranked to the [redacted] wine to the Russian market.

\* \* \*

The company [redacted] is the exclusive representative of the unique South African liqueur [redacted] in Russia.

Mr. [REDACTED] states that [REDACTED] “was one of the first companies to import wine from [REDACTED]” but he does not provide specific examples of how the petitioner’s original work has significantly impacted the alcohol distribution industry or otherwise constitutes original business-related contributions of “major significance” in the field. While the petitioner engaged wine and liquor suppliers in [REDACTED] to import their products through his distribution company, there is no evidence demonstrating that his ability to market products in Russia constitutes original contributions of major significance in the field. Rather, it demonstrates only that the petitioner runs a successful import business. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to a single company or its wine and liquor suppliers. Further, with regard to [REDACTED] being the exclusive representative of [REDACTED] in Russia, the AAO cannot conclude that every importer who holds exclusive rights to distribute a foreign supplier’s products in a particular country has automatically demonstrated original contributions of major significance in the field.

The petitioner submitted an article about himself in the Summer 2010 issue of [REDACTED] magazine entitled ‘[REDACTED]’. In the article, the petitioner answers multiple questions posed by the author. The author states that the petitioner “is an exclusive supplier of [REDACTED] wines to the Russian market,” but the article fails to explain how the petitioner’s original work was majorly significant to the field. In addition, the petitioner submitted an article in [REDACTED] entitled [REDACTED]. The article discusses a trip organized by [REDACTED] that brought a delegation from Russia to the [REDACTED] to visit its wine making regions. In the article, the petitioner recounts details from the trip and provides general information about [REDACTED]’s wine industry. While the petitioner’s company helped foster relationships with [REDACTED] winemakers, there is no documentary evidence showing that his work rises to the level of original business-related contributions of major significance in the field. The preceding two articles in [REDACTED] are not sufficient to establish that the petitioner’s work has been of major significance to the field.

Counsel also asserts that the petitioner “was key in introducing [REDACTED] to the Russian Market.” The petitioner submitted a letter from [REDACTED] Head of [REDACTED] Office in Russia, stating:

[The petitioner] was a very active part of the team who built the [REDACTED] brand in Russia in the 90s, at the time of [REDACTED]

He contributed to the “education” of the trade partners explaining what cognac and [REDACTED] are and how to appreciate it.

He also participated to the buildup of [REDACTED] distribution network, until the time when distribution was taken over by [REDACTED]

Mr. [REDACTED] comments that the petitioner was “part of the team who built the [REDACTED] brand in Russia” in the 1990s, but Mr. [REDACTED] fails to explain how the petitioner’s work was both original and majorly significant to the field.

The petitioner submitted a February 2000 article about himself in [REDACTED] entitled ‘[REDACTED] [the petitioner]’ that included an interview of the petitioner. In the article, the petitioner states:

I was facing a dilemma: to go to the USA to study there for the sake of the new supermarket system project, or to accept [REDACTED]'s proposal to join his company in order to be engaged in selling [REDACTED] . . . I decided to collaborate with [REDACTED]. We worked together for about 2 years. Our team, which consisted of 5 persons, traveled all around the country. We visited all the clubs and restaurants. Not a single bottle of [REDACTED] cognac was left uncorked in the bars.

\* \* \*

We worked hard and reached our goal: [REDACTED] became popular. Our joint project with [REDACTED] was selling a combined assortment of [REDACTED]. I was supposed to head the new structure, while [REDACTED] which had been collaborating with [REDACTED] for more than 1.5 years, would do retail sales. We gave [REDACTED] the right to distribute [REDACTED] in boxes, but [REDACTED] despite our expectations, gave the exclusive right to another company, not [REDACTED].

While the petitioner recounts his experience selling [REDACTED] cognac in the preceding [REDACTED] article, there is no documentary evidence showing that his work developing customers for the brand has substantially impacted the industry or otherwise constitutes an original artistic contribution of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to a distribution company and its supplier.

Counsel further states that the petitioner "created the revolutionary [REDACTED] [REDACTED]. The petitioner submitted a June 2000 article about himself in [REDACTED] magazine entitled [REDACTED]. The article discusses [REDACTED]' to expand its variety of wines, develop retail networks, and undertake a production project. While the article discusses [REDACTED] marketing campaign, there is no evidence of the plan's impact beyond the petitioner's company. The article does not provide specific examples of how the plan impacted the field at a level indicative of original artistic contributions of major significance in the field.

The petitioner also submitted a 2000 article in [REDACTED] entitled [REDACTED] that states:

Modern winemaking has a global nature. Countries previously not known as wine makers are entering the world market. In order to familiarize the Russians with the "new wine geography," the [REDACTED] company has launched a project named [REDACTED]

[The petitioner], president of this company, the author of this idea, invited our Almanac to participate in the project. Here is the idea. A group of specialists from [REDACTED] will be visiting wineries in Europe, Asia, Africa, North and South America, Australia, tasting and selecting the wines that [REDACTED] will then be importing to Russia.

To cover this ambitious project, we are planning to create a permanent column in our almanac, “[REDACTED] Today, we are telling you about the expedition to Burgundy, France, that took place last July.

The team included [REDACTED] employees as well as [REDACTED] president of the [REDACTED] [REDACTED] and [REDACTED] vice editor-in-chief of the [REDACTED] member of the [REDACTED]. More than 350 wines were tasted in the framework of the expedition, 60 of them were selected for the Russian market.

While the author notes that the petitioner organized a project to visit wineries in Europe, Asia, Africa, North and South America, and Australia that included the Editor-in-Chief of [REDACTED] and the President of the [REDACTED] the author fails to provide specific examples regarding how the collaborative project significantly impacted the field or otherwise equates to original contributions of major significance in the field. The petitioner has not established that importing various foreign wines to Russia rises to the level of original business-related contributions of major significance in the field.

In addition, counsel asserts that the petitioner “brought the California wines from [REDACTED] and [REDACTED] to the Russian market.” The petitioner submitted a letter from [REDACTED] Russian Office, stating:

[The petitioner’s] name is associated with the Russian market’s exclusive contracts with two most distinguished [REDACTED] (the farm was founded in [REDACTED] and [REDACTED] the first winery built in [REDACTED] (founded in [REDACTED].

Thanks to [REDACTED] owned by [the petitioner], the wines of those wineries were presented in Russian store chains, in specialized boutiques and on the restaurant wine cards.

Led by [the petitioner], [REDACTED] participated in extensive wines tastings from California farms. The event was organized by the [REDACTED] in cooperation with the [REDACTED] residence at the [REDACTED] on October 27, 2011.

\* \* \*

In 2006, [the petitioner] was invited by the [REDACTED] to visit California wineries. The trip resulted in an exclusive contract of importing the wines produced by the [REDACTED]

I can state without hesitation that [the petitioner] is one of the top authorities in Russia’s wine industry. He is our ambassador of many brands represented in Russia. His recent visit to the [REDACTED] has resulted in signing of contracts with various wineries, such as [REDACTED]

As [the petitioner] is the chief contact for promoting Californian wines in Russia. Recently, in 2011 he visited the California wineries mentioned above to share his valuable expertise and to sign new exclusive contacts for supplying wine to Russia.

Ms. [redacted] states that [redacted] has contracts to import wine from various California wineries, she does not provide specific examples of how the petitioner's original work has significantly impacted the wine distribution industry or otherwise equates to original contributions of major significance in the field. While the petitioner engaged wine suppliers in California to import their products through his distribution company, there is no evidence demonstrating that his ability to market wines in Russia constitutes original business-related contributions of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to a single company or its wine suppliers.

Counsel also asserts that the petitioner "introduced biodynamic wines to the Russian market." The petitioner submitted a letter from [redacted] Managing Partner of [redacted] Massachusetts, stating:

One of the academic institutions that we work with is the [redacted] [redacted] which is a joint project devised by major Russian and international business leaders. . . . [The petitioner], the owner of a renowned [redacted] was of one of the first graduates of the program and is an honored alumnus of the program. [The petitioner] continues to be involved in today's development of the [redacted] program. . . . He has led his company [redacted] to become a leading distributor of the world's most remarkable brands of wines and liquors.

As a leading venture capital firms in the emerging field of sustainability/clean technology, [redacted] attention was drawn by [the petitioner's] innovative skills as a pioneer of introducing Biodynamic wines into the Russian market.

The following is taken from Wikipedia and explains Biodynamic wines. *These are wines made using the principles of biodynamic agriculture. The practice of biodynamics in viticulture (grape growing) has become popular in recent years in several growing regions, including France, Switzerland, Italy, Austria, Germany, Australia, Chile, South Africa, Canada, and the United States. A number of very high-end, high-profile commercial growers have converted recently to biodynamic practices. . . . Currently, for a wine to be labeled "biodynamic" it has to meet the stringent standards laid down by the Demeter Association, which is an internationally recognized certifying body.*

*Like biodynamic agriculture in general, biodynamic viticulture stems from the ideas and suggestions of Rudolf Steiner (1861-1925), who gave his now famous Agriculture Course in 1924, predating most of the organic movement.*

\* \* \*

Biodynamic wines are the latest trend in the industry worldwide, and it is no surprise that [the petitioner] is one of the first to be promoting it. He is already known for bringing wines

from South Africa to Russia, as well as being the exclusive distributor of numerous French and other European wines across Russia. It is yet another achievement that shows [the petitioner's] contribution to the wine industry of Russia is significant.

Mr. [REDACTED] asserts that the petitioner demonstrated “innovative skills as a pioneer of introducing Biodynamic wines into the Russian market.” The AAO notes that having a diverse or unique skill set is not a business-related contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used his unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 (Comm’r 1998). While Mr. [REDACTED] comments that the petitioner was “one of the first to be promoting” the biodynamic wine concept in Russia, he fails to provide specific examples of how the industry has been significantly influenced by the petitioner’s work. The lack of any specific information offers no evidence of original business-related contributions of major significance in the field. For instance, there is no empirical evidence showing that consumption of biodynamic wine in Russia increased substantially as a result of the petitioner’s original work or that his promotional strategies otherwise equate to original business-related contributions of major significance in the field.

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the references’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a wine and spirits specialist and enologist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner’s work has been unusually influential, substantially impacted 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 display of the alien’s work in the field at artistic exhibitions or showcases.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that he meets this criterion.

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

The petitioner submitted a letter from [redacted] Head of [redacted] in Russia, stating that the petitioner "was a very active part of the team who built the [redacted] brand in Russia in the 90s" and that the petitioner participated in the "buildup of [redacted] distribution network, until the time when distribution was taken over by [redacted]" The petitioner, however, failed to submit documentary evidence showing that [redacted] and [redacted] have distinguished reputations. In addition, the petitioner has not established that he performed in a leading or critical role for [redacted] 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 failed to submit organizational charts or similar documentary evidence to demonstrate where his position fit within the overall hierarchy of [redacted] The letter from Mr. [redacted] fails to explain how the petitioner's role was leading relative to that of companies' other salespersons and distributors, let alone the top officers or executives who ran [redacted] Further, the submitted evidence does not establish that the petitioner was responsible for the preceding companies' success or standing to a degree consistent with the meaning of "critical role." While the petitioner may have performed admirably as part of the team who worked to distribute the [redacted] brand in Russia, there is no evidence showing that his role as a team member was leading or critical to the preceding companies as a whole.

The petitioner submitted a letter from [redacted] President of the [redacted] stating:

[The petitioner] . . . is not only a member of [redacted] he also was behind the creation of the association as one of its masterminds. Since then, [the petitioner] has been taking an active part in the activities of the Association as to attracting new members, [redacted] training and revalidating.

\* \* \*

Besides the educational programs, workshops, master classes, tasting and presentations that [the petitioner] has held for [redacted] he has organized and sponsored trips to the world wine regions.

The petitioner has provided no objective documentary evidence showing that the [redacted] has a distinguished reputation. In addition, the petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where his role fit within the overall hierarchy of the [redacted] The letter from Mr. [redacted] fails to explain how the petitioner's role was leading relative to that of the other members who helped create the association, let alone the top officers who run the association. Further, the submitted evidence does not establish that the petitioner was responsible for the [redacted] s success or standing to a degree consistent with the meaning of "critical role." Accordingly, the petitioner has failed to demonstrate that his role for the [redacted] was leading or critical.

The petitioner submitted a letter from [redacted] President of the [redacted] stating:

[The petitioner] is not only a member of the [redacted] but he also plays a very active role in organizing numerous important events.

The most vital involvement is [the petitioner's] assistance in organizing competitions and master classes. In particular, [the petitioner] assisted the [redacted] to organize a master class on the [redacted] liqueur at the educational [redacted] center.

The record contains no objective documentary evidence showing that the [redacted] has a distinguished reputation. In addition, the petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where his role fit within the overall hierarchy of the [redacted]. The letter from Mr. [redacted] fails to explain how the petitioner's role was leading relative to that of the other members who helped create the association, let alone the top officers who run the association. Further, while the petitioner assisted the [redacted] in organizing a master class for Amarula liqueur, the submitted evidence does not establish that the petitioner was responsible for the [redacted]'s success or standing to a degree consistent with the meaning of "critical role." Accordingly, the petitioner has failed to demonstrate that his role for the [redacted] was leading or critical.

The petitioner submitted a letter from [redacted] President of the [redacted] (Russia), stating:

[The petitioner] is an honorary member of the [redacted] created in 1999 in Russia under the auspices of the [redacted]

\* \* \*

Supporting the [redacted] from the day of its foundation, [the petitioner] took an active part in creating the statutes and structure of the [redacted] and attracting new members to the [redacted]

\* \* \*

He has taken an active part in creating training programs for restaurateurs, hoteliers, bartenders, sommeliers, for their education and further training, as well as in creating the Professional Standards and the project named ' [redacted] created by [redacted] with support from the [redacted]

The record contains no objective documentary evidence showing that the [redacted] has a distinguished reputation. Further, while Mr. [redacted] states that the petitioner is an honorary member of the [redacted] the petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where his position fit within the overall hierarchy of the [redacted]. The letter from Mr. [redacted] fails to explain how the petitioner's role was leading relative to that of the other honorary

members, let alone the top officers who run the organization. In addition, the submitted evidence does not establish that the petitioner was responsible for the success or standing to a degree consistent with the meaning of "critical role." Accordingly, the petitioner has failed to demonstrate that his role for the was leading or critical.

The AAO acknowledges that the petitioner submitted evidence indicating that he has performed in a leading or critical role for and that his company has a distinguished reputation. The AAO notes, however, that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at \*1, \*12 (D.C. Cir. March 26, 2008); *Snapshot.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). Accordingly, demonstrating a leading or critical role for only a single distinguished organization, does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted tax returns indicating that he earned in 11,386,372 RUB in 2008, 14,047,475 RUB in 2009, 12,588,525 RUB in 2010, and 19,258,457 RUB in 2011 as Chief Executive Officer and Owner of . The petitioner also submitted the following:

1. 2010 salary information from the U.S. Bureau of Labor Statistics for "Agriculture and Food Scientists" reflecting a median annual wage of \$58,540;
2. A 2011 Salary Survey Report in *Wine Business Magazine* indicating that the median salary for an enologist ranges from \$45,760 to \$50,387 depending on the size of the vineyard;
3. 2011 salary information from the U.S. Bureau of Labor Statistics for "Chief Executives" of "Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers" reflecting an annual mean wage of \$211,490;
4. 2012 salary information from <http://simplyhired.com> stating that the "Average Alcohol Distributor" salary is \$36,000;

5. 2011 salary information from the U.S. Bureau of Labor Statistics for “Chief Executives” in the “Management of Companies and Enterprises” category reflecting a mean annual wage of \$209,320;
6. 2011 salary information from the Russian “Federal State Statistics Service” stating that “average monthly nominal wage” for Russian workers, across all professions, is 23,693.10 RUB or 284,317.20 RUB annually;
7. Salary information from the Russian “Federal State Statistics Service” for 1995 – 2010 showing “Average Monthly Nominal Accrued Wages of Employees of Organizations by Kinds of Economic Activities”; and
8. 2011 information from the Russian Federal Bureau of State Statistics showing “Average Salary based on the field the level of education.”

As Chief Executive Officer and Owner of [REDACTED] the petitioner must submit evidence showing that he has earned a “high salary” or other “significantly high remuneration” in relation to others performing similar work his specific field, not simply relative to “Agriculture and Food Scientists” in the United States (item 1), enologists in the United States (item 2), alcohol distributors in the United States (item 4), Russian workers across all professions (item 6), those working in a general economic area (item 7), or those with a similar level of education (item 8). In addition, with regard to items 1 – 8, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence showing that he has earned a “high salary” or other “significantly high remuneration” in relation to others in the field, not simply a salary that is above “average” or a salary that places him the top half of his field. Average or median salary information is not a proper basis for comparison. Instead, the petitioner must submit documentary evidence showing the earnings of those in his occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the petitioner has not established that he meets this regulatory criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that he meets this criterion.

#### *Summary*

The petitioner has failed to demonstrate his receipt of a major, internationally recognized award or to satisfy the antecedent regulatory requirement of three categories of evidence. 8 C.F.R. § 204.5(h)(3).

#### **B. Final Merits Determination**

The AAO will next conduct 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," 8 C.F.R. § 204.5(h)(2); 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (viii), and (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(i), the AAO notes that the awards were received by ' [REDACTED] ' and the wine or champagne products that the company distributes, not the petitioner himself. In addition, the petitioner failed to submit objective evidence demonstrating the national or international *recognition* of the awards. The petitioner has not established that the awards given to his company and the products it distributes are indicative of or consistent with his sustained national acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii), all of the material submitted by the petitioner was deficient in at least one of the regulatory requirements such as not including a date or an author, not being about the petitioner, and not being shown to have been published in "major trade publications" or other "major media." The petitioner has not established that the material submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii) is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the submitted evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The letter from [REDACTED] states the petitioner served as a jury at a bartender competition held in [REDACTED] and that the "best [REDACTED] bartenders participated in the competition." There is no documentary evidence showing that the petitioner's involvement in this regional competition was indicative of national or international acclaim. The petitioner also submitted a letter from [REDACTED] asserting that the petitioner served as jury member more than once for the [REDACTED] s all-Russian competition for the title ' [REDACTED] '.

Regarding the self-serving statements from Mr. [REDACTED] and Mr. [REDACTED] concerning the reputation of the preceding competitions, as previously discussed, USCIS need not rely on self-promotional material. The petitioner failed to submit objective evidence documenting the reputation of both the bartender competition held in [REDACTED] and ' [REDACTED] ' competition. 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. at 165. Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Without objective evidence showing the level of notoriety or stature associated with the preceding competitions, the AAO cannot conclude that the petitioner's participation was commensurate with sustained national or international acclaim at the very top of the field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(v), the petitioner submitted documentation showing that he distributed South African wines in Russia, marketed the [REDACTED] brand in Russia in the 1990s, created the [REDACTED] marketing campaign, imported California wines to Russia, and promoted Biodynamic wines in the Russian market. The petitioner, however, has not established that his contributions are indicative of sustained national or international acclaim at the very top of the field. Demonstrating that the petitioner's work was "original" without demonstrating the "major significance" of his business-related contributions is not useful in setting the petitioner apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." While the petitioner is a successful importer of wine and liquor to Russia, there is no indication that his work rises to the level of original contributions of major significance in the wine and liquor distribution industry. In this case, the record does not contain sufficient evidence that the petitioner's original work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that he has performed in a leading or critical role for more than one organization or establishment that has a distinguished reputation.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner has not established that he has earned a high salary in relation to others in the field. The petitioner has not demonstrated that his salary places him among that small percentage who have risen to the very top of the field of endeavor. *See Matter of Price*, 20 I&N Dec. at 954; *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x at 713-14; *Grimson v. INS*, 934 F. Supp. at 968; *Muni v. INS*, 891 F. Supp. at 444-45. The salary evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought; however, the petitioner has not established that his achievements are commensurate with sustained national or international acclaim as a wine and spirits specialist and enologist, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59.

### 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.

Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or

international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 (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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is rejected. If the petition had been properly filed, the appeal would be dismissed.