



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: NOV 25 2013

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

APPLICATION: 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 (AAO) in your case.

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in business as an e-commerce entrepreneur, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner asserts that he submitted sufficient qualifying evidence to meet multiple regulatory criteria and is eligible as an alien of extraordinary ability. Specifically, the petitioner asserts that the director erred in denying the criteria for lesser national and international awards, for contributions of major significance in the field, and for performing a leading or critical role for organizations or establishments that have a distinguished reputation.

I. LAW

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

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

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

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

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

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

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

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

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

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

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

II. ANALYSIS

A. Translation

The regulation at 8 C.F.R. § 103.2(b)(3) states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator

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

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.”

Virtually all of the documents that the petitioner submitted as evidence into the record required a translation and needed to comply with the requirements at 8 C.F.R. § 103.2(b)(3). While not addressed by the director in his decision, the petitioner submitted translations that do not comport with the regulation. Instead, translations are accompanied by a single blanket certification that does not identify the translations it purports to certify. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have no probative value and the petitioner cannot establish the evidentiary requirements as required by the criteria outlined in 8 C.F.R. § 204.5(h)(3)(i)-(x) based on the submitted documents. Even if the translations satisfied the regulation, however, the director correctly determined that the petitioner in this instance cannot establish his eligibility pursuant to 203(b)(1)(A) of the Act.

B. Evidentiary Criteria²

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 director determined that none of the awards that the petitioner submitted met the requirements of this criterion. In the denial decision, the director concluded that the petitioner did not submit evidence of national recognition for each of the submitted awards. On appeal, the petitioner merely observes that he previously submitted detailed evidence in response to the director's Request for Evidence (RFE) and provided information about previous winners. In the denial, the director fully considered the evidence of record, including the information on previous winners. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). Furthermore, while the petitioner submitted evidence that various national trade groups and industry groups conferred certificates and honors upon him, the issue is whether the awards or prizes themselves are nationally or internationally recognized as awards or prizes for excellence in the field. The submitted information does not establish that the petitioner received lesser nationally or internationally recognized prizes or awards as contemplated by the regulations at 8 C.F.R. § 204.5(h)(3)(i). See *Rijal v. U.S. Citizenship and Immigration Service.*, 772 F.Supp.2d 1339, 1345 (W.D.Wash. Feb. 22, 2011) (finding that Congress entrusted the administrative process to determine what is an award), *aff'd*, 683 F.3d 1030 (9th Cir. 2012).

Accordingly, the petitioner has not established that he meets this criterion.

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

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

The petitioner previously submitted evidence under this criterion. The director's decision concluded that the petitioner did not meet this criterion and the petitioner does not identify any factual or legal error relating to this criterion on appeal. Consequently, the petitioner abandoned this claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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 director concluded that the petitioner established this criterion. As an initial matter, as noted above, the evidence submitted under this regulatory criterion does not comport with the certification requirements for translated documents and cannot satisfy the regulatory requirements for the translation problems. Moreover, even if the submitted documents met the translation requirements, the submitted documentation on [REDACTED] states that it is an online media company. A large, online media company or conglomerate often is comprised of multiple publications and not every individual publication backed by the media company would qualify as a major trade publication or other major media. In this instance, the petitioner has not identified the specific publication with which the article on [REDACTED] is associated and therefore cannot establish that the article meets the regulatory requirements of 8 C.F.R. § 204.5(h)(3)(iii). Similarly, while the petitioner submits background information on circulation and readership for [REDACTED] the submitted documentation provides limited information and is insufficient to establish that [REDACTED] is either a professional or major trade publication or other major media. The petitioner submitted information from the website [REDACTED] which indicated that [REDACTED] has a circulation figure of 100,000 and an audience of policy makers and senior managers in government departments, and experts and scholars in education and research institutions. The petitioner, however, submitted no information about this website such that the information about [REDACTED] on this website is probative evidence. Moreover, the translator who translated this website did not individually certify this translation or identify it on the blanket certification.

Accordingly, the petitioner has not satisfied the regulatory requirements and the AAO withdraws the director's finding with regard to this criterion.

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

The director determined that the evidence of record is insufficient to meet this criterion. On appeal, the petitioner asserts that Chinese media credit him with an active and leading role in the revolution of the

business model in China and that reflects he established the country's first and largest e-commerce portal for small and medium enterprises for domestic trading purposes. As stated above, however, the petitioner did not submit individually certified translation of the published material and did not establish the significance of the media outlets that reported on his company's websites.

The record also includes letters of support from the following individuals attesting to the petitioner's contributions in the field: [REDACTED] Chief Chinese Representative of the [REDACTED]

[REDACTED] the Secretary-General of the [REDACTED]

[REDACTED] and the Director of the Office of [REDACTED]

and [REDACTED]

[REDACTED] Vice President of [REDACTED]

All of the submitted letters reflect the same translation deficiencies as the other documents of record. Regarding the content of the letters, they generally attest that the petitioner's company, [REDACTED] was the first e-commerce portal to serve small and medium enterprises and has been a successful endeavor.

The director, however, concluded that because the technology and the business model for creating e-commerce already existed prior to the development of the petitioner's company, the [REDACTED] is not an original contribution. The director further concluded that the petitioner had not demonstrated the impact of his business model. On appeal, the petitioner asserts that while the concept of e-commerce is not original, the application varies from country to country. 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)). The petitioner did not submit any documentation demonstrating how his e-commerce business in China was original.

Furthermore, even assuming that the [REDACTED] is an original contribution that satisfies the plain language requirements 8 C.F.R. § 204.5(h)(3)(v), the petitioner still cannot satisfy all the requirements of this criterion because [REDACTED] is a single contribution. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of "contributions" in the plural, which 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) use 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 plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.³

Thus, the petitioner has not established eligibility under 8 C.F.R. § 204.5(h)(3)(v).

³ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director determined in his decision that the petitioner met this regulatory criterion. Had the petitioner submitted translations that complied with 8 C.F.R. § 103.2(b)(3), the record would support the director's determination.

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

The director determined that the petitioner failed to satisfy the plain language requirements of this criterion. Specifically, the director determined that the petitioner had not established that his role as the founder and CEO of the [REDACTED] is a leading or critical role, and that evidence of record does not indicate the company has a distinguished reputation. On appeal, the petitioner reasserts that he founded (1) the number one e-commerce portal for China's small and medium companies to do domestic trade, (2) China's first organic products sales platform named the [REDACTED] and (3) the largest rural social networking website in China.

At the outset, there is only a single article in the record that mentions the other companies that utilize the petitioner's portal. Due to the blanket certification that does not identify the translations it is certifying, the translation of the article lacks probative value. 8 C.F.R. § 103.2(b)(3).

The role of a founding CEO is a leading or critical one within the organizational structure of a corporation and the AAO withdraws the director's conclusions in this regard. Nonetheless, in light of the translation deficiency, and the fact that there is no probative evidence in the record attesting to the distinguished reputation of the [REDACTED] the record does support the finding that the petitioner met this criterion. Finally, [REDACTED] is a single organization or establishment. The plain language of the regulation requires evidence that the petitioner performed in a qualifying role for organizations or establishments in the plural, consistent with the statutory requirement for extensive documentation. Section 203(b)(1)(A)(i) of the Act.

Therefore, the petitioner does not meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The petitioner initially submitted a salary certification and articles along with his petition in support of this criterion. The director denied the petitioner's claim regarding this criterion and the petitioner does not raise this issue on appeal. Thus, the petitioner abandoned this claim. See *Sepulveda*, 401 F.3d 1226 at 1228; *Hristov*, 2011 WL 4711885 at *9.

C. Summary

The petitioner has not submitted sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

ORDER: The appeal is dismissed.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I-&-N: Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).