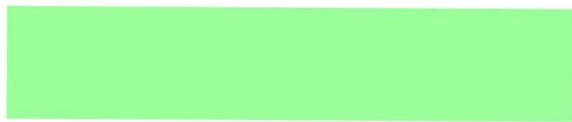


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

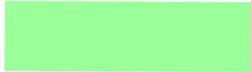


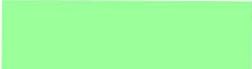
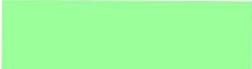
U.S. Citizenship
and Immigration
Services



DATE: **OCT 15 2013**

Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,

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

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 the sciences and education, pursuant to section 203(b)(1)(A) of the Immigration and Nationality 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.

The petitioner’s priority date established by the petition filing date is October 17, 2011. On June 13, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on December 20, 2012. On appeal, the petitioner submits a statement with additional documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

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.*

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

II. ANALYSIS

A. Evidentiary Criteria²

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

Within the appellate statement, the petitioner indicated that he did not assert eligibility under this criterion and he did not intend for any evidence to be considered under this criterion. The petitioner also indicated that he agreed with the director's determination that the petitioner did not meet the requirements of this criterion. Accordingly, the petitioner has abandoned that claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

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 petitioner indicated within the appellate statement that he agreed with the director's determination that the petitioner did not meet the requirements of this criterion. Accordingly, the petitioner has abandoned that claim. See *Sepulveda*, 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

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.

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, the petitioner asserts that he provided evidence relating to this criterion initially and in response to the director's RFE. The petitioner's statement accompanying the initial filing did not

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

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address any of the criteria. Rather, the petitioner indicated that he was submitting “Journal publication” and “Journal publication as an author.” The only articles the petitioner submitted, however, were articles he authored, which fall under 8 C.F.R. § 204.5(h)(3)(vi). The director advised in the RFE that the petitioner had not submitted any evidence relating to this criterion. In response, the petitioner implied that his conference presentations served to meet this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, the petitioner provides additional evidence in the form of computer screen shots of scholarly articles the petitioner coauthored. From the screen shots, it appears that these articles were to be presented at the [REDACTED] between June 19 and 24 of 2010. Evidence of presentations by the petitioner does not constitute published material that is about the petitioner and relating to his work in the field.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided evidence in response to the RFE that the director did not discuss within his decision. This evidence includes:

1. A project related to taro sweet liqueur and an accompanying Internet site address;
2. Two instances in which the petitioner served as an invigilator; and

3. The petitioner's certifications of ability.

Regarding item 1, the petitioner provided a letter from [REDACTED] Director of the [REDACTED] [REDACTED] dated July 8, 2010. Director [REDACTED] confirms that the petitioner's university would receive funds for implementing the project titled, "Research and development of agricultural products processing technique – Study on the processing condition of taro sweet liqueur." The petitioner did not document or explain the manner in which this project, upon completion, had a significant impact in his field as a whole. One university's receipt of funding in exchange for implementing this project is not sufficient to satisfy this criterion's requirements. The petitioner provided an Internet address for a webpage that is in a foreign language. The petitioner did not provide a translation of this webpage as required by 8 C.F.R. § 103.2(b)(3). This evidence does not demonstrate that the petitioner has made contributions of major significance in his field.

Regarding item 2, the petitioner did not demonstrate how serving as an invigilator, essentially supervising students during testing, constitutes major contributions in his field of endeavor. Regarding item 3, the petitioner provided the following certifications: (1) as a corporate tutor; (2) as a provision internal auditor of the food safety management system; (3) as a behavior image-customer service manager; (4) as a customer service inspection manager; and (5) as under food safety managing the HACCP process. Throughout the proceedings, the petitioner has not provided an explanation of how these certifications equate to contributions of major significance within his field.

As such, the evidence is not sufficient to satisfy the regulatory requirements of this criterion.

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

The director determined that the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion.

B. Comparable Evidence

Within the appellate statement, the petitioner indicates that the AAO should consider portions of the submitted evidence as comparable evidence under 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the alien is able to demonstrate that he or she is unable to qualify for this classification because the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the alien's occupation. It is the petitioner's burden to explain why the standards are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where an alien is simply unable to meet or submit sufficient documentary evidence that complies with at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As the petitioner has not asserted that the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation, the petitioner may not rely on comparable evidence to qualify for

this immigrant classification. As such, as the petitioner has not met his burden for relying on comparable evidence.

C. Summary

The petitioner has failed to satisfy the antecedent 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[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.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent 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.

³ 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).