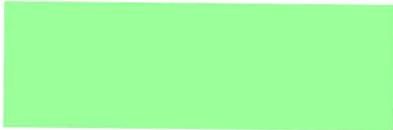


(b)(6)

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



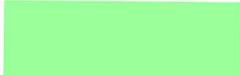
U.S. Citizenship
and Immigration
Services



Date: **OCT 21 2013** Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary:

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 APPLICANT:

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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to parts 2 and 6 of the November 28, 2012 petition, the petitioner, who is also the beneficiary, seeks classification as an alien of extraordinary ability in the sciences, specifically, as an industrial engineer in the field of theoretical computation modeling, 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 that the petitioner has 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner files an appellate statement and supporting documents, most of which the petitioner had previously filed. According to part 3 of the Form I-290B, Notice of Appeal or Motion, and the appellate statement, the petitioner challenges the director's adverse findings as relating to the membership in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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

I. THE LAW

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

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

- (A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –
- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
 - (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
 - (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

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

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

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

The court stated that the AAO’s evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed

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

to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the AAO affirms the director’s finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top in the field, or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

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

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).

In his May 1, 2013 decision, the director found that the petitioner’s senior member status in the [REDACTED] constitutes membership in a qualifying association. The record does not support this finding. The AAO conducts appellate review on a *de novo* basis. *Soltane v. Dep’t of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004). The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9th Cir. 2003).

According to the evidence in the record, including an attachment to a March 11, 2013 letter from [REDACTED] Managing Director of [REDACTED] to become an [REDACTED] senior member, an applicant must be “an engineer, scientist, educator, technical executive, or originator in [REDACTED] designated fields,” must “have been in professional practice for at least ten years and [must] have shown significant performance over a period of at least five of those years.” The

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

attachment to Ms. [REDACTED] s letter further provides that an applicant may demonstrate significant performance by showing:

- (a) Substantial responsibility or achievement in one or more of [REDACTED]-designated fields; or
- (b) Publication of papers, books, or inventions in one or more of [REDACTED]-designated fields; or
- (c) Technical direction or management of important work with evidence of accomplishment in one or more of [REDACTED]-designated fields; or
- (d) Recognized contributions to the welfare of professions encompassed by one or more of the [REDACTED]-designated fields; or
- (e) Development or furtherance of important courses in one or more of the [REDACTED]-designated fields at an institution; or
- (f) Contributions equivalent to those of (a) to (e) in areas related to [REDACTED]-designated fields, provided these contributions serve to advance progress substantially in [REDACTED]-designated fields.

The evidence shows that [REDACTED] senior membership is open to those who have been an engineer or scientist for at least ten years and have published papers relating to engineering or science. The petitioner has not shown that these requirements constitute outstanding achievements. As such, the evidence in the record is insufficient to show that [REDACTED] requires outstanding achievements from its senior members. Moreover, the petitioner has not shown that to become an [REDACTED] senior member, recognized national or international experts in their disciplines or fields judge the candidate's achievements, as required by the plain language of the criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

In response to the director's request for evidence (RFE), the petitioner provided an undated document that states "[REDACTED] requires that [REDACTED] should have recognized national experts in applicants' field to review applicants' outstanding achievement for granting the senior membership." The petitioner has not provided any information relating to the source or reliability of this document. It is unclear from the document whether it is from [REDACTED] or whether it was applicable when the petitioner became a senior member.

Accordingly, the petitioner has not shown that his [REDACTED] senior member status constitutes membership in a qualifying association. In addition, the petitioner has not shown his membership in a second qualifying association. Specifically, the plain language of the criterion requires evidence of membership in qualifying associations, in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the petitioner's membership in [REDACTED] constitutes a single example of membership in a qualifying association, the record lacks evidence establishing his membership in a second association, which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. *See* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that his position as the Dean of a graduate school constitutes his membership in a second qualifying association. The petitioner provides a May 10, 2013 letter from [REDACTED], President of [REDACTED] and an online printout entitled [REDACTED] which the petitioner had previously filed.

The evidence in the record does not establish that the petitioner's faculty position at a college constitutes his membership in a qualifying association. First, the petitioner has not provided evidence showing that serving as a dean of [REDACTED] constitutes membership in an association, as required by the plain language of the criterion. In other words, the petitioner has not shown that [REDACTED] is an association in the field for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(ii).

Second, assuming *arguendo* that [REDACTED] constitutes an association, Mr. [REDACTED]'s letter does not establish that the college requires outstanding achievements of its faculty, as judged by recognized national or international experts. Mr. [REDACTED] states in a conclusory manner that "[a]t [REDACTED] we hold our faculty members to a higher standard in our selection process. It is required that they show an outstanding achievement which was recognized by the appropriate international and national level group of experts in their selected fields." Merely repeating the language of the statute or regulations, however, does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990). Moreover, Mr. [REDACTED]'s May 10, 2013 letter appears to be inconsistent with his March 3, 2010 letter, in which he makes no reference to [REDACTED] requiring outstanding achievements, as judged by recognized national or international experts, for its faculty members. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Third, although Mr. [REDACTED] claims in his May 10, 2013 letter that [REDACTED]'s faculty includes Professor [REDACTED] who was nominated for a Nobel Prize, the evidence in the record does not show that [REDACTED] requires outstanding achievements from all its faculty members, as judged by recognized national or international experts. Indeed, the online printout entitled [REDACTED] which the petitioner initially filed in support of the petition and files again on appeal, does not indicate that all the listed faculty members have had outstanding achievements, as judged by recognized national or international experts.

Finally, although the record includes evidence of the petitioner's selection to the Program Committee of the [REDACTED] on appeal, the petitioner has not specifically challenged the director's adverse finding that his selection does not constitute membership in a qualifying association. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. See *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y.

Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner has not presented documentation of his 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 has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

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).

In his May 1, 2013 decision, the director concluded that the petitioner has not met this criterion because the evidence does not show (1) the published material is about the petitioner, relating to his work, (2) the material is published in professional or major trade publications or other major media, and (3) the foreign language material is accompanied by complete certified translations. On appeal, the petitioner asserts that 6park.com constitutes major media, similar to cnn.com and foxnews.com, and that [REDACTED] constitutes a professional or major trade publication. The petitioner files a document entitled "Certification of Translation Accuracy," an article entitled "[The Petitioner] [REDACTED]" and online printouts from [REDACTED]

The evidence in the record does not establish that the petitioner has met this criterion. First, the article entitled "[The Petitioner] [REDACTED]" is not probative evidence because the petitioner has not provided a certificate of translation that meets the requirements under the regulation at 8 C.F.R. § 103.2(b)(3). The regulation provides that "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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." The "Certification of Translation Accuracy" does not specify that the translator is competent to translate the article from Chinese to English.

Second, even if the translation were sufficient, the petitioner has not shown that the article appeared in a qualifying publication or other major media. The petitioner contends that [REDACTED] constitutes major media because it has the same internet traffic level as cnn.com and foxnews.com. The printout from [REDACTED] indicates that [REDACTED]'s "over all global traffic rank is 2,617 on the internet world." The printouts from [REDACTED] indicate that [REDACTED]'s "Global Rank" is [REDACTED] and its regional traffic ranks range from 28 to 195. The April 2010 printout from trafficestimate.com indicates that [REDACTED] "has a worldwide rank of [REDACTED]" The petitioner has not shown the reliability of these websites. Regardless, the April 2010 trafficestimate.com printout indicates that "foxnews.com has a worldwide rank of [REDACTED]" which is much higher than [REDACTED]'s rank.

Similarly, the petitioner has not provided information relating to cnn.com that shows [REDACTED] has a comparable rank such that it is major media.

Third, the August 2011 [REDACTED] article, entitled [REDACTED] [REDACTED] mentions [REDACTED] but does not mention the petitioner. As such, the evidence does not show that the article is about the petitioner, relating to his work in the field for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(iii).

Fourth, neither [REDACTED] s “[The Petitioner] [REDACTED] or [REDACTED] [REDACTED] includes information relating to the author of the material, as required by the plain language of the criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

Finally, although the record includes evidence of other published material, on appeal, the petitioner has not specifically challenged the director’s adverse finding as relating to the other published material. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d 1226, 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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

Evidence of the alien’s 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. 8 C.F.R. § 204.5(h)(3)(iv).

In his May 1, 2013 decision, the director concluded that the petitioner has provided evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field. The record supports the director’s finding that the petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

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).

On appeal, the petitioner asserts that he meets this criterion, because he had “originally introduce[d] the workable model for nuclear tidal wave” and “published the paper about life cycle of the social network.” The petitioner further asserts that his papers were published in the “top journals in [his] area.” In addition, the petitioner states that “[his] model is widely cited,” “widely used by other researchers for papers and experimental projects [and] is highlighted in government websites, public media and academic publications.” The petitioner files a document entitled [REDACTED] [REDACTED] and online printouts relating to the citations of his work.

The evidence in the record is insufficient to show that the petitioner has met this criterion. First, authorship of scholarly articles falls under the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi) and does not also serve to meet this criterion absent evidence that the original research reported in those articles constitutes contributions of major significance in the field.³ The distinction between these two criteria is consistent with the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meets at least three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3).

Second, although the petitioner claims that his papers were published in “top journals,” the importance or prestige of a journal is insufficient to demonstrate the significance, let alone major significance, of each individual article published in the journal. While on appeal, the petitioner has resubmitted documents relating to the journals’ impact factors and rankings, such documents assess a journal’s place in the world of scholarly literature, not the significance of any particular article published in the journal.

Third, although the petitioner has asserted that other authors have cited his articles, the petitioner has not provided sufficient evidence showing that the level of citations is of such high frequency that it shows the results in these papers constitute contributions of major significance in the field. The petitioner’s appellate statement notes that the average citation per paper in the field is eight. The accompanying “Average Citation Rates for Papers Published by Field, 2000-2010,” which the petitioner had previously provided, indicates that the average annual citation per paper in the field of physics is 8.74. The appellate statement also states that the petitioner’s papers’ “independent citations are above 100. The citing authors are from over 30 countries [a]cross 5 continents.” The petitioner, however, has not provided information relating to the citation frequency of each of his papers individually for comparison purposes. Moreover, even if the petitioner were able to show that his papers garner above average citations, the record lacks evidence of the level of citation papers reporting contributions of major significance in the field typically garner.

Fourth, although the petitioner has asserted that his work has been “highlighted in government websites” and has been “supported by . . . government agencies,” the petitioner has not shown that his work constitutes original contributions of major significance in the field. At most, he has shown that his work is useful, appears to have contributed to the general pool of knowledge and is sufficiently promising to warrant government funding. The receipt of research funding does not demonstrate the significance of the ultimate results from that research.

Finally, although the record includes reference letters relating to the value of the petitioner’s research, on appeal, the petitioner has not specifically challenged the director’s finding that the reference letters do not provide sufficient detail and examples of the petitioner’s impact in the field

³ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

to demonstrate that the petitioner's work constitutes original contributions of major significance in the field. In his decision, noting that "[t]he authors [of the reference letters] (many of whom know the beneficiary) express their appreciation for the beneficiary's knowledge, skills, abilities and research talents," the director concluded "the authors fail to show the beneficiary has made original contributions of major significance in the field." Based on the information provided in the reference letters, the director further found that "[w]hile the beneficiary's work is useful and appears to have contributed to the general pool of knowledge, the beneficiary's work has not significantly impacted the field." As the petitioner has not specifically challenged the director's findings relating to the reference letters, the petitioner has abandoned these issues, as he did not timely raise them on appeal. *Sepulveda*, 401 F.3d 1226, 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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

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).

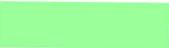
In his May 1, 2013 decision, the director concluded that the petitioner has provided evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The record supports the director's conclusion that the petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that 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

⁴ The AAO maintains *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits



satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).