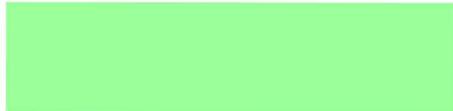




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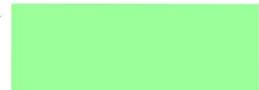


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Office: TEXAS SERVICE CENTER

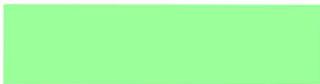
FILE:



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,

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. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” in business, 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 September 17, 2012. On November 14, 2012 the director issued a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on February 13, 2013. On appeal, the petitioner submits a statement with additional documentary evidence in the form of his book. The petitioner previously submitted photocopies of excerpts from the book.

A review of the record of proceeding reflects that the petitioner submitted Form I-290B, Notice of Appeal or Motion, on March 8, 2013. Over a year later, the petitioner submitted additional correspondence and evidence. The petitioner did not check the box on the Form I-290B Notice of Appeal or Motion indicating that he would be submitting a brief and/or additional evidence within 30 days (the time period specified on the form) and did not otherwise request an extension to supplement the record pursuant to 8 C.F.R. § 103.2(a)(2)(vii). Regardless, the documentary evidence is not probative of eligibility at the time of filing as it relates to achievements that postdate the petition filing date. Eligibility 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). We will consider the petitioner’s assertions and supporting evidence relating to his achievements that predate the filing of the petition below.

For the reasons discussed below, we uphold 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 decision to deny the petition, the court took issue with the 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.

¹ Specifically, the court stated that we 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).

The court stated that the 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 [we] did),” and if the petitioner did not submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as [we] 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, we 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 not satisfied the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Oral Argument

On appeal, the petitioner requests oral argument. The regulation at 8 C.F.R. § 103.3(b)(1) provides that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument. *See* 8 C.F.R. § 103.3(b)(2). In this instance, the petitioner asserted that he is one of the first professionals working in the field of supply chain management in large organizations and in academia as the reasoning behind his oral argument request. The petitioner did not explain why his achievements in his field cannot be adequately documented in writing or identify any issues of law to be resolved. As the written record of proceeding fully represents the facts and issues in this matter, the request for oral argument is denied.

B. Evidentiary Criteria²

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.

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that he is a member of more than one “association” in his discipline or field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the petitioner to claim that he was admitted to the association because of his outstanding achievements; the

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

petitioner must show that the association requires outstanding achievements of all prospective members. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner initially claimed membership in four associations, which he reduced to three in response to the director's RFE. The director determined that the petitioner did not meet the requirements of this criterion. On appeal, the petitioner only contests the director's adverse decision relating to the petitioner's participation with the [REDACTED] higher education author and reviewer team and as participation as a research reviewer for [REDACTED] School of Management. The petitioner asserts that his field of expertise is as a supply chain management consultant and as an author. However, the petitioner only submitted evidence reflecting that he has authored one book prior to filing the petition and that book is in the field of supply chain management. Thus, the petitioner's field is supply chain management.

The petitioner submitted two letters from [REDACTED] Senior Brand Manager at [REDACTED]. Mr. [REDACTED]'s initial letter only indicated that the petitioner "has been included in the [REDACTED] higher education reviewer team as 'Subject matter expert' and he will be involved in reviewing the works related to the subject of supply chain management as developed by other authors and researchers." Mr. [REDACTED]'s second letter submitted in response to the director's RFE reflected that applications for this team are evaluated based on authorship credentials, industry experience, teaching and research credentials, and a proven ability to meet tight deadlines. First, a reviewing team is not an association. Second, these requirements are not outstanding achievements in supply chain management and, thus, do not meet the regulatory requirements that the association requires outstanding achievements of its members. Third, the petitioner did not submit evidence to demonstrate that team membership with [REDACTED] is "in the field for which classification is sought" as the regulation requires. Fourth, the petitioner also did not provide evidence reflecting that this association utilizes nationally or internationally recognized experts to judge the prospective members' achievements. Although the petitioner's appellate brief states that this team's membership is entirely based on proven credentials and outstanding achievements, he did not submit evidence to corroborate this claim. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942, at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner submitted two letters from [REDACTED] Associate Professor of Operations and Technology Management for [REDACTED] School of Management. The petitioner claims that his work "as a subject matter expert and research reviewer in the field of SCM (Supply Chain Management)" is a qualifying membership under this criterion. Within his RFE response, the petitioner states: "The association of membership to serve as a guest trainer and doctoral research reviewer is provided to few exclusive people who have performed exceptionally well in their area of work and are considered as industry experts and scholars." Neither participating as a guest trainer nor as a doctoral research reviewer constitute membership in an association as contemplated by the regulation at 8 C.F.R.

§ 204.5(h)(3)(ii). Furthermore, Professor [REDACTED] second letter dated December 3, 2012 indicated that he was “planning to involve” the petitioner in these activities in the future. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49.

Accordingly, the petitioner has not submitted evidence that meets the plain language requirements of this criterion. Rather, the evidence submitted under this criterion relates to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and will be discussed under that criterion below. Consistent with the statutory requirement for extensive evidence at section 203(b)(1)(A)(i) of the Act, the regulation at 8 C.F.R. § 204.5(h)(3) requires evidence that meets three separate criteria with different evidentiary requirements.

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. While not all of the petitioner’s reviewing duties occurred prior to the filing date, the record does include an April 4, 2012 letter from Dr. [REDACTED] of the [REDACTED] who states: “I can confirm that [the petitioner] was and will be part of the of the [sic] reviewer team for the Colloq[u]m European Retail Research 2012 as well as 2013.” Thus, the record supports the director’s conclusion that the petitioner 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 claims his contribution under this criterion to be the book he authored. The petitioner supported this claim through expert letters that the director considered, finding the letters to be vague when describing the petitioner’s contributions. The director noted that some of the letters provided an indication of a future contribution to the petitioner’s field while the regulation requires that the

petitioner's contributions have already come to fruition. Within his appellate brief the petitioner states: "[My book] provides employable skills to the students to fill the thousands of well-paying jobs in [the] supply chain management field in the corporations and industries based in the United States." The petitioner subsequently refers to five expert letters but does not identify how his book was both an original contribution while also establishing that it has already made a significant impact within his field, which was the deficiency the director identified. For example, [REDACTED] Dean of the [REDACTED] asserts only that he can "imagine [the petitioner's book] in the hands of many MBA students across Latin America." [REDACTED] Dean of Academics for the [REDACTED], asserts that the petitioner's book is highly beneficial for students, but he does not provide examples of its widespread use. While Dr. [REDACTED] an associate professor at [REDACTED] asserts that she uses the petitioner's book as "a main reference for students," she does not provide examples of the book's wider influence in the field. [REDACTED] Director of [REDACTED] asserts that his company has reviewed and adopted the petitioner's book. While Mr. [REDACTED] asserts that [REDACTED] collaborates with "multiple business schools in India," the record does not reflect the number of business schools that use the petitioner's book through their collaboration with [REDACTED].

While the authors identify the petitioner's original work, they do not explain how the petitioner has already impacted the field. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. See *Matter of Katigbak*, 14 I&N Dec. at 49. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's possible future contributions, they cannot form the cornerstone of a successful extraordinary ability claim. 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 letters from experts 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; 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").

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language 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.

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner met the requirements of this criterion based on his published book. The record does not support the director's favorable eligibility determination related to this criterion for the reasons outlined below.

The petitioner claims to meet this criterion based on his authorship of a single book. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of "scholarly articles" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). 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); *Snapnames.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).

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

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. The petitioner also has the responsibility to demonstrate that he actually performed the duties listed relating to the leading

role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. Finally, a leading or critical role is essentially experience and the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience "shall" be in the form of letters from current or former employers, although the petitioner must also provide corroborating evidence of the distinguished reputation of the organization or establishment.

The petitioner claims eligibility based on his roles for three organizations: [REDACTED] and provided several letters in support. The director determined that the petitioner did not meet the requirements of this criterion.

The petitioner demonstrated that he performed in a leading or critical role for [REDACTED]. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner performed in a leading or critical role for "organizations or establishments" in the plural, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act.

In reference to his employment with [REDACTED], the only letter from an individual who is authorized to represent [REDACTED] is a letter dated August 21, 2012 from [REDACTED]. Ms. [REDACTED] letter verifies the petitioner's work performed at [REDACTED] and states that the petitioner's work "has been critical to our project and we look forward for his continued effort for the overall success of the project." Ms. [REDACTED] did not specify how the petitioner's role in his capacity as system integrator consultant has been critical to the [REDACTED] or to [REDACTED] as a whole. USCIS need not accept the primarily conclusory assertions from Ms. [REDACTED] regarding the petitioner's impact on the [REDACTED]. See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The remaining evidence asserting that the petitioner satisfied this criterion's requirements through [REDACTED] is from [REDACTED], Senior Manager for [REDACTED]. The record does not contain any evidence indicating that Ms. [REDACTED] is authorized to speak on behalf of [REDACTED]. As such, the letter from Ms. [REDACTED] will not be considered as evidence regarding [REDACTED].

The petitioner's final claim under this criterion relates to his role at [REDACTED]. The letter attesting to the petitioner's role for [REDACTED] is from [REDACTED], Senior Manager for [REDACTED]. In

³ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on August 4, 2014, a copy of which is incorporated into the record of proceeding.

the same manner that Ms. [REDACTED] was not authorized to represent [REDACTED] the petitioner did not submit evidence demonstrating that Mr. [REDACTED] is authorized to represent [REDACTED]. As the petitioner did not submit evidence from an authorized [REDACTED] representative, Mr. [REDACTED]'s letter will not be considered as evidence of the petitioner's experience with that organization.

As the petitioner has only submitted evidence that he performed in a leading or critical role for one organization or establishment, he has not submitted evidence that meets the plain language requirements of this 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 director discussed the evidence submitted for this 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. Therefore, the petitioner has abandoned his claims under this criterion. *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) (the 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 submitted qualifying evidence under this criterion.

C. Summary

The petitioner has not satisfied 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 we conclude 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, we need not explain that conclusion in a final merits

determination.⁴ Rather, the proper conclusion is that the petitioner has not satisfied 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.

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).