

(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:

AUG 27 2014

Office: NEBRASKA 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:

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, Nebraska 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 the beneficiary's classification as an "alien of extraordinary ability" as a motion picture actress, 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 beneficiary's "sustained national or international acclaim" and present "extensive documentation" of the beneficiary'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 May 3, 2013. On May 14, 2013, 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 August 9, 2013. On appeal, the petitioner submits a brief and new documentary evidence. For the reasons discussed below, we uphold the director's ultimate determination that the petitioner has not established the beneficiary's 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 beneficiary'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.

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.*

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. Prior O-1 Visa

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. First, the petitioner works in the motion picture and television industry. The regulation at 8 C.F.R. § 214.2(o) separately addresses aliens who have a demonstrated record of extraordinary achievement in the motion picture or television industry. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary achievement as “a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television industry.” The regulatory criteria for meeting this definition are set forth at 8 C.F.R. § 214.2(o)(3)(v) and differ from those relating to the immigration classification now sought discussed below. For example, the regulation at 8 C.F.R. § 214.2(o)(3)(v)(5) lists testimonials from experts as a category of evidence while the regulation at 8 C.F.R. § 204.5(h)(3) does not include testimonials as their own category of evidence. As such, that the petitioner obtained nonimmigrant status as an alien with a demonstrated record of extraordinary achievement in the motion picture or television industry is not determinative.

Moreover, it must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

[REDACTED]
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B. Evidence Deriving from *Wikipedia* and Translations

The petitioner relies in part on evidence from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Therefore, this documentation has no evidentiary weight or probative value. Further, the translations in the record do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

Translations. 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 record includes certifications from [REDACTED] dated December 26, 2008 that certify specific numbered translations. The actual translations, however, bear no numbers. On appeal, [REDACTED] certifies that she translated “the documents attached” which she does not identify or list. Neither of the certifications identifies either the petitioner or the beneficiary. Thus, the record contains no evidence that these certifications pertain to the translations in this record of proceeding.

C. One-time Achievement

The petitioner claimed that the beneficiary accomplished the following one-time achievements in the proceedings before the director under 8 C.F.R. § 204.5(h)(3):

- [REDACTED]
- [REDACTED]

The director found that the petitioner had not submitted evidence that the beneficiary actually received these awards. On appeal, the petitioner submitted sufficient evidence that the beneficiary actually received the [REDACTED]. However, the record lacks primary evidence of the [REDACTED]. As a portion of Exhibit

² Online content from *Wikipedia* is subject to the following general disclaimer, “WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 12, 2014, a copy of which is incorporated into the record of proceeding.

9 within the initial filing, the petitioner provided a photograph of the beneficiary, an award, and two other individuals. The informational page accompanying this photograph reflects that this is from the [REDACTED] for the beneficiary's [REDACTED] for her starring role in [REDACTED] by Italian director [REDACTED]. The name of the award is not displayed within this photograph. Additionally, the year in which the beneficiary received this award listed on this informational page does not correlate with other claims within the file. For example, the RFE response indicates that the petitioner received this award in 2008 and is accompanied by two photographs of the beneficiary and the award. Again, the name of the award is not displayed in either photograph. While the petitioner provided photographs of these unknown awards, the regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be documented copies or photographs of the awards themselves if the certificates or photographs reflect the recipient and the name of the award. An example of secondary evidence might be media reports of the competition results. Affidavits attesting to awards, therefore, would need to "overcome the unavailability of both primary and secondary evidence." The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the beneficiary is presumed ineligible pursuant to 8 C.F.R. § 103.2(b)(2).

Even if the petitioner had provided primary evidence of the [REDACTED] the director determined that the petitioner did not establish that either of the beneficiary's awards constitutes a one-time achievement that is, a major, internationally recognized award. On appeal, the petitioner indicates on the Form I-290B that the director ignored documentary evidence related to the beneficiary's claimed major internationally recognized awards. Within the appellate brief, the petitioner only addresses the [REDACTED] and no longer asserts a claim of the [REDACTED]

The director determined that this award did not amount to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3). With regard to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), a Federal Court recently stated:

The . . . debate over what constitutes a “major” international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those awards that are “major” and those that are not. The applicable law in this case draws no clearer line, other than to establish that some awards are “major, internationally recognized award[s]” and others are “lesser nationally or internationally recognized prizes or awards”. 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to differentiate between “major” and lesser awards. In legislative history, Congress named the Nobel Prize as its sole example of a major, internationally recognized award that would by itself demonstrate “extraordinary ability.” *Kazarian*, 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner’s] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define “major” in this context. It entrusted that decision to the administrative process.

Rijal v. U.S. Citizenship & Immigration Services, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *see also Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *5 (D.D.C. Dec. 16, 2013). The *Rijal* court also determined that USCIS did not act arbitrarily and capriciously when it:

[C]onsidered the relevant factors and articulated a rational connection between the facts it found and the choice it made. USCIS explicitly considered the awards and all of the evidence [the petitioner] submitted to support his claim that they were major, international awards. USCIS articulated a rational connection between those facts and its conclusion that his awards were not “major.” [Evidentiary citation omitted.] Another adjudicator might have come to a different conclusion, but that is irrelevant. Unless the court can conclude that no rational adjudicator would have come to that conclusion, the USCIS did not act arbitrarily and capriciously.

Id. at 1345-46 *aff’d*, 683 F.3d 1030; *see also Visinscaia*, 2013 WL 6571822, at *5.

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even lesser internationally recognized awards could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the beneficiary’s field as one of the top awards in that field.

The petitioner asserts within the RFE response that the [REDACTED] is an internationally recognized, distinguished, and highly respected film festival, where only the most celebrated talents in the film industry are invited.” Within this same response, the petitioner submits articles that indicate receiving awards at the [REDACTED] is often a precursor to receiving an Oscar at the Academy Awards, one of the highest honors in filmmaking. However, the fact that an honor occurs prior to a top industry award is not an indicator that the precursor award is also one of the top awards in the field.

On appeal the petitioner identifies a letter from [REDACTED] Secretary General of [REDACTED] which sponsors the [REDACTED] Mr. [REDACTED] describes the festival as a “renowned [event], which has taken place between the Christmas and New Year holidays since [REDACTED]” Mr. [REDACTED] also notes that many of the films showcased at this event proceed “to win many prestigious honors including Golden Globes and Academy Awards.”

Regarding Mr. [REDACTED] claim that the [REDACTED] is a renowned event, the regulation at 8 C.F.R. § 204.5(h)(3) requires that the prestige must be related to the award itself rather than to the event at which the award is issued. Furthermore, the petitioner did not provide evidence from outside the award issuing entity that demonstrates the prominence of this [REDACTED] Award, such as, but not limited to, media coverage of the award selections.

We affirm the director’s ultimate determination that the petitioner did not provide evidence to establish that the beneficiary’s [REDACTED] is a major, internationally recognized award, as it did not provide evidence that this award is internationally recognized in the beneficiary’s field as one of the top awards in that field.

D. Evidentiary Criteria⁴

The petitioner asserts on the Form I-290B, that the director did not consider the “opinion letters authored by academy award directors, producers, and critics in the field of motion picture[s],” which referenced the petitioner’s national and international recognition. However, the petitioner did not specify under which regulatory criterion that such opinion letters should be considered. As stated above, unlike the similarly-worded nonimmigrant classification for which USCIS has approved the beneficiary, the immigrant classification the petitioner now seeks for the beneficiary does not include testimonials. Compare 8 C.F.R. § 214.2(o)(3)(v) with 8 C.F.R. § 204.5(h)(3). Rather, such letters may be relied upon to corroborate evidence that exists in the file or to elaborate on the petitioner’s claims; however, the petitioner must indicate how it wishes the agency to apply the letters. In addition, such letters could be relevant to a final merits determination. In this matter, however, USCIS need not conduct a final merits determination as the petitioner has not satisfied the initial evidentiary requirements.

⁴ 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the beneficiary is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner claims the beneficiary's receipt of two actual awards, and several instances in which she was either invited to film festivals, or she was invited to present an award at film festivals. The awards the petitioner claims the beneficiary received are the previously discussed [REDACTED] at the [REDACTED] and the [REDACTED] at the [REDACTED]. The petitioner did not provide primary evidence of the beneficiary's [REDACTED] as noted above. The director determined that the petitioner did not meet the requirements of this criterion.

While the beneficiary's invitations to attend or to present at the various film festivals are notable, the petitioner did not submit evidence demonstrating that these invitations are evidence that meets the plain language requirements of this criterion as prizes or awards.

Regarding both of the beneficiary's claimed awards, the petitioner has not provided evidence that demonstrates these awards are nationally or internationally recognized awards in the beneficiary's field. The petitioner provided information relating to the film festivals that issued the awards; however, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the award itself be nationally or internationally recognized. While the issuing entity's prominence is of some value, it is not a determining factor regarding the awards' national or international recognition.

Even if the petitioner were to establish that the film festivals where the beneficiary received her awards are nationally or internationally recognized, this level of acknowledgement does not automatically impute such recognition to her awards. An award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This can occur through specific means; for example, through media coverage. The petitioner did not submit evidence of major media coverage of the events or similar evidence from independent sources. Unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular award is nationally or internationally recognized. Again, the regulation places the focus on whether the petitioner has demonstrated that the award is nationally or internationally recognized, rather than on the film festival at which the beneficiary received the award.

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

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

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the beneficiary and the contents must relate to the beneficiary's work in the field under which she 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.

The petitioner provided the following forms of evidence: pictures in magazines accompanied by captions, transcripts of television interviews, and magazine and newspaper articles. The director determined that the petitioner did not meet the requirements of this criterion. The director did identify an article that appeared to meet the regulatory requirements, except for the shortcoming of a lack of independent circulation data, or the publication's intended audience that may demonstrate the publication is a professional or major trade publication, or other major media. On appeal, the petitioner did not provide any such information for this publication, although it did attempt to provide similar information for "a few of the publications" that are part of the record of proceeding at the petitioner's Exhibit 83.

A review of the evidence relating to this criterion reveals that each form of evidence falls short of meeting all of the regulatory requirements. The evidence possesses one or more of the following shortcomings:

- Supporting evidence to establish evidence constitutes major media derives from *Wikipedia*, which this decision has discussed as being an unreliable source;
- The material is not about the beneficiary and relating to her work in the field of motion pictures;
- The evidence lacked circulation or distribution data, or the publication's intended audience to demonstrate the publication is one of the regulatory required publication types;
- The petitioner submitted several evidentiary items in the form of photographs with a caption that includes the beneficiary. The petitioner did not demonstrate that the beneficiary is mentioned in the articles that accompany the photographs. A caption accompanying a

photograph that merely identifies the beneficiary in the photograph is not published material about the beneficiary and relating to her work;

- Most of the foreign language documents were not accompanied by properly certified translations as required in the regulation at 8 C.F.R. § 103.2(b), which states the translator must certify that the translation is “complete and accurate”; and
- Foreign language documents with certified translations did not bear the date, author, or publication name in which the material appears as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Regarding the evidence titled, [REDACTED] the published material is about the beneficiary and relates to her work in the field but lacks a date, author, the publication in which the material appears, and is not accompanied by circulation or distribution data or information relating to the intended audience to demonstrate that the publication constitutes one of the required forms of media. Furthermore, the evidence from [REDACTED] dated November 2005 is about the beneficiary and relates to her work in the field, but the petitioner did not submit circulation or distribution data or provide information relating to the intended audience to demonstrate the publication constitutes one of the required forms of media.

The petitioner also provided transcripts of television interviews on appeal. First, as this regulatory criterion requires “published material” in professional or major trade publications or other major media and “the title, date, and author of the material,” television interviews and television appearances by themselves are not published material in one of the required forms of media and do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Second, the supporting evidence relating to the television stations Rai 1 and Rai 2 to establish that these stations are major media is from *Wikipedia*, which this decision has noted is not a reliable source.

Regarding the transcript of a portion of the awards ceremony at the [REDACTED] the petitioner did not submit evidence that this transcript was published in professional or major trade publications or other major media. Within the appellate brief the petitioner only asserts that this evidentiary exhibit appeared on television and characterizes it as a “television interview.” 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 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Even if the petitioner had demonstrated that this ceremony appeared on television, television appearances by themselves are not published material in one of the required forms of media and do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Of additional importance, the petitioner did not indicate the date on which this awards ceremony took place; only that it was in 2013.⁵ 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

⁵ An Internet search that revealed that the [REDACTED] occurred between [REDACTED] of 2013, which postdates the petition’s priority date, May 3, 2013. See [REDACTED] accessed on August 26, 2014, a copy of which is incorporated into the record of proceeding.

become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

As such, 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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish the beneficiary's eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned its 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.

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

This criterion requires a petitioner to establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts. The director discussed the evidence submitted pursuant 8 C.F.R. § 204.5(h)(3)(x) and found that the petitioner failed to establish the beneficiary's eligibility as it did not provide evidence reflecting "the beneficiary's commercial success relative to others involved in similar pursuits." On appeal, the petitioner makes only passing reference to this issue within Part 3 of the Form I-290B, asserting that box office receipts for films starring the beneficiary were ignored. The petitioner did not offer any additional specifics within the appeal, nor did it provide evidence of box office receipts for other commercially successful movies in the U.S. or Italy to which we could compare the box office evidence relating to the beneficiary's films.

Because the petitioner did not address the director's concerns on appeal, it has not established that the beneficiary has experienced commercial successes in the performing arts. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

E. 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 beneficiary 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.⁶ 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.

⁶ 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).