



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: DEC 05 2014

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on May 6, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on June 2, 2014. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences as a psychiatrist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for this visa classification.

On appeal, the petitioner files an appellate statement and additional evidence. The petitioner asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(ii), (v) (vi) and (ix). 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, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we 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 initial 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).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present 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, as initial evidence, 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).

On appeal, the petitioner asserts that he is a member of the American Psychiatry Association (APA), which designated him as a Distinguished Fellow. He further asserts that “only [a] few [members] are selected as a [sic] Distinguished Fellows,” and that although the “By-laws and website publish the minimal qualification for selection of [a] Distinguished Fellow, [] only topmost and

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

extraordinary member[s] with outstanding achievement get selected.” The petitioner has not shown that he meets this criterion.

First, the petitioner initially submitted his membership card which lists his status as a General Member, not a Distinguished Fellow. While the record contains a September 10, 2013 letter from Dr. [REDACTED] Secretary of the [REDACTED] informing the petitioner of the Board of Trustee’s approval for membership at the Distinguished Fellow level, the letter further states that the petitioner would receive this level of membership in May 2014. Accordingly, the petitioner was not a member at this level when he filed the petition in October 2013. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Regardless, the petitioner has not established that membership at the Distinguished Fellow level is qualifying. Notably, Dr. [REDACTED] asserts that the Distinguished Fellow honor “reflects your dedication to the work of the APA and the psychiatric profession.” Dedication to one’s profession, while commendable, is not an outstanding achievement. The bylaws do not provide the criteria for Distinguished Fellows, stating: “The criteria and procedures for selection and nomination of General Members or Fellows for Distinguished Fellowship shall be established by the board and the Membership Committee and shall apply uniformly for all District Branches.”

The APA online materials do not state that the APA requires “outstanding achievements” of its Distinguished Fellows, “as judged by recognized national or international experts in their disciplines or fields.” Specifically, the Distinguished Fellow nomination requirements are:

- Not less than eight consecutive years as a General Member or Fellow of the APA.
- Certification by the American Board of Psychiatry & Neurology, the Royal College of Physicians & Surgeons of Canada, the American Osteopathic Association or equivalent certifying board.
- Nomination is initiated by your local District Branch/State Association.
- Three letters supporting your nomination must be received from current Distinguished Fellows or Distinguished Life Fellows.

The materials further state that “Distinguished Fellowship is awarded to outstanding psychiatrists who have made significant contributions to the psychiatric profession in at least five of the following areas: administration, teaching, scientific and scholarly publications, volunteering in mental health and medical activities of social significance, community involvement, as well as for clinical excellence.” The online materials then explain that, for nomination to the Distinguished Fellow level, the general member or fellow must have made significant contributions to five of the following ten areas:

1. Certification by the American Board of Psychiatry & Neurology, the Royal College of Physicians & Surgeons of Canada, the American Osteopathic Association or equivalent certifying board.
2. Involvement in the work of the district branch, chapter, and state association activities.
3. Involvement in other components and activities of APA.
4. Involvement in other medical and professional organizations.
5. Participation in non-compensated mental health and medical activities of social significance.
6. Participation in non-medical, non-income-producing community activities.
7. Clinical contributions.
8. Administrative contributions.
9. Teaching contributions.
10. Scientific and scholarly publications.

The petitioner has not shown that “significant contributions,” as the term is used in the online materials, constitute “outstanding achievements . . . as judged by recognized national or international experts in their disciplines or fields,” as required under the plain language of the criterion. The online materials do not define what constitutes “significant contributions” or contributions. The 10 specific items listed in the online materials also do not show that the APA requires “outstanding achievements” from its Distinguished Fellows. Item 1 relates to an applicant’s professional certification. Items 2 to 6 relate to an applicant’s professional, social and community activities. Items 7 to 9 lack specific information as to what constitutes “contributions” and do not clarify the “significant contributions” requirement. Item 10 merely requires an applicant to show publication activity, without requiring the applicant to show or the APA to judge the influence or impact of the applicant’s publication activity. The petitioner has not shown that the evidence in the record, including the APA online materials, establishes that his Distinguished Fellowship membership level meets this criterion.

In addition, although the petitioner states on appeal that “only topmost and extraordinary member[s] with outstanding achievement get selected” as Distinguished Fellows, the petitioner has not provided probative, relevant and credible evidence showing how many APA members have been designated as Distinguished Fellows or how selective the APA is when choosing a Distinguished Fellow. Going on record without supporting documentary evidence is not sufficient for the 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)).

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).

*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 has authored published articles that have garnered moderate citations and because he has published articles on [REDACTED]. The evidence in the record indicates that the petitioner is a psychiatrist, whom the [REDACTED] has employed since 2010. In their letters, the petitioner's supervisor and a colleague praise his skills and experience as a researcher and clinician. The evidence further shows that the petitioner has published articles in professional publications and presented in medical conferences. Although the petitioner has shown that he is an experienced and skilled psychiatrist, who has an approved petition for a National Interest Waiver (NIW), pursuant to section 203(b)(2)(B)(i) of the Act, he has not established that he meets this criterion.

First, the regulations contain a separate criterion regarding the authorship of published articles. See 8 C.F.R. § 204.5(h)(3)(vi). As discussed below, we conclude that the petitioner has met the authorship of published articles criterion. Evidence directly relating to one criterion is not presumptive evidence that the petitioner meets a second criterion. Such a presumption would negate 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). Accordingly, the regulation views contributions as a separate evidentiary requirement from authorship of scholarly articles. Authorship of published articles is not sufficient evidence under this criterion absent evidence that the articles are of "major significance" in the field of psychiatry. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In its second *Kazarian* decision, the court reaffirmed its holding that our adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a published article is a contribution of major significance, we look at the impact an article has after publication.

Although the petitioner has asserted that his published materials have garnered citations, the petitioner has not shown that his work has impacted the field of psychiatry consistent with contributions of major significance in the field. The petitioner has submitted an online printout from researchgate.net, that provides information relating to "total publication views," "total full-text downloads" and "total citation." The figures provided are aggregate figures for four of the petitioner's published articles. The online printout does not provide information specifically relating to each published article. The online printout also does not provide information relating to who viewed the articles, if the same people viewed the articles multiple times; who downloaded the articles, or if the same people downloaded the articles multiple times. Significantly, the printout the petitioner provided does not list the citing articles, such that the petitioner has established who cited his articles or if the citations appeared in scholarly articles or other professional publications. The petitioner also submitted no evidence regarding the reliability of researchgate.net as a website. For example, the petitioner did not submit evidence about the website, indicating whether it is an independent online citation index, a search engine that compiles citations, or a social networking site on which scientists maintain profiles to which they contribute data. The petitioner also did not

submit evidence explaining how the site captures citations or what it includes as citations, relevant information given that the petitioner did not include a list of the citing articles.<sup>3</sup> As such, this document is insufficient to show the impact of the petitioner's published work.

The petitioner has submitted two reference letters, but they also do not establish the impact of the petitioner's published work. For example, in her letter, Dr. [REDACTED] Chief of Staff, [REDACTED] describes five of the petitioner's published materials, including a conference presentation. Dr. [REDACTED], however, does not provide any specific information relating to how the published materials have impacted the field, other than stating in a conclusory manner that the petitioner "has been instrumental in several useful findings" and that his articles on analgesics "have been useful for scientist[s] all over the USA for research work." Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. We need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

On appeal, the petitioner files a March 2011 document entitled [REDACTED]. The document shows that the average number of citations over the ten-year period in the field of Psychiatry/Psychology was 11.26, with a 2000 citation average of 21.84, and a 2010 citation average of 0.34. The petitioner has not provided evidence relating to how many citations each of his published articles has garnered or where the citations of his articles appeared such that we can compare them with the average number of citations appearing in scholarly articles. As such, the petitioner has not submitted evidence that we may compare to the average citation information noted in the document that the petitioner has filed on appeal. Moreover, even if the petitioner has shown that one or more of his published articles have garnered more than the citation average, the petitioner has not presented evidence showing that an article that has been cited more frequently than the average citation rate constitutes a contribution of major significance in the field.

Second, the petitioner's articles published on xPharm do not meet this criterion. The petitioner asserts that he has published 15 articles on xPharm, which, according to a December 19, 2005 article from marketwired.com that the petitioner submitted, is a database that provides medicinal chemists, biologists, pharmacologists and other researchers information on chemical compounds. The 2005 article also provides that [REDACTED], which owns [REDACTED] has "announced an agreement with the [REDACTED] to contribute to the [REDACTED] effort to catalog information on the biological properties of small molecules in its freely available [REDACTED] database. [REDACTED] will enrich the [REDACTED] resource for the scientific community by furnishing chemical structures from [REDACTED] database, giving scientists with an [REDACTED] license the ability to move from

<sup>3</sup> While Google.scholar is not an exhaustive resource, a search on that website, which located the petitioner's same four articles, only revealed approximately a quarter of the number of citations listed on the researchgate.net printout the petitioner submitted. (We accessed the website December 2, 2014 and incorporated the results into the record of proceeding.) Accordingly, USCIS was not able to confirm the number of citations listed on researchgate.net.

biological data in [REDACTED] to more focused pharmacology data in [REDACTED] that is essential to drug research.”

The petitioner has submitted only the first pages of his [REDACTED] articles. These first pages show that each article relates to one chemical compound and provides general information relating to that particular compound. According to [REDACTED], DO, Assistant Medical Director, [REDACTED] California, the petitioner “has published monographs for [REDACTED] on multiple analgesics which have served as a valuable resource for our staff.” The petitioner has not established that his articles present original work rather than summarize and/or reiterate already discovered information about the compounds. Even if these articles represent original work, the petitioner has not established that his [REDACTED] articles contribute to the field beyond adding to the general pool of knowledge for certain compounds. Ultimately, the evidence is insufficient to show that the petitioner’s articles are original, such that he is the first person or one of the first people to have discovered the information relating to the compound. Moreover, the petitioner has not shown that the impact of his [REDACTED] articles is consistent with contributions of major significance in the field. The petitioner has provided insufficient specific evidence on the researchers who have relied on the information in his [REDACTED] articles and/or how frequently or under what circumstances they have relied on the information.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board has also held, however, “[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from colleagues or associates that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010).<sup>4</sup> The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int’l*, 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, as this decision has done, 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”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int’l*, 19 I&N Dec. at 795; *see also 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

<sup>4</sup> In 2010, the *Kazarian* court reiterated that our conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

1972)); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

While the evidence confirms that some of the petitioner's work is original and contributes to the pool of knowledge in the field of psychiatry, the evidence does not establish that his impact in the field has risen to a level consistent with contributions of major significance. *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of psychiatry. 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).

The director concluded that the petitioner meets this criterion. The petitioner has submitted evidence showing that he has authored a number of scholarly articles that are published in scientific publications, including [REDACTED] and [REDACTED]. Accordingly, the petitioner has presented evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

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

On appeal, the petitioner asserts that he meets this criterion because “[he] was employed by Napa State Hospital at [a] higher salary than other psychiatrists.” He further asserts that his “annual salary is \$268,524 (exhibit 4), which is significantly higher than the average salary in the field of psychiatry.” The petitioner has not shown that he meets this criterion.

The petitioner has submitted evidence showing that at the time he filed his petition in October 2013, his monthly salary was \$22,377, which annualizes to \$268,524. On appeal, the petitioner has submitted evidence showing that his salary has remained the same at the time he filed his appeal. The petitioner has not shown that he has “commanded a high salary or other significant high remuneration for services, in relation to others in the field.” According to an online printout from the [REDACTED] the petitioner's employer, “California's DHS psychiatrists are offered a wide range of monthly salaries starting at \$18,146.00 for board-eligible, and \$18,622.00 for board-certified.” The petitioner's monthly salary of \$22,377 is higher than the minimal monthly compensation his employer offers to board-certified psychiatrists. The petitioner

has not, however, demonstrated that board-certified psychiatrists represent the highest paid psychiatrists.<sup>5</sup>

Moreover, on appeal, the petitioner submits a document from the Bureau of Labor Statistics, showing that as of May 2013, for the occupation “Psychiatrists,” defined as those who are “Physicians who diagnose, treat, and help prevent disorders of the mind,” the average annual wage is \$182,660 and the median annual wage is \$178,950. The document does not provide information relating to the earnings of those in the 75th or 90th percentile. Rather, the document includes an endnote under those percentiles that does not appear on the one page the petitioner submitted of what is annotated as a nine-page document. As such, this document only shows that the petitioner’s salary is above the average and median annual wages. Earning more than the average or more than half of the people who are in the same occupation is insufficient to show that the petitioner “command[s] a high salary or other significantly high remuneration for services, in relation to others in the field,” as required by the criterion.

Accordingly, the petitioner has not presented evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

#### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

### 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. As the petitioner has not done so, the proper

<sup>5</sup> According to evidence the petitioner filed in support of his approved National Interest Waiver petition pursuant to section 203(b)(2)(B)(ii) of the Act, the petitioner’s employer offers compensation higher than that of the petitioner to at least one group of psychiatrists. According to a document entitled “Salary Schedule,” which the petitioner filed in support of his NIW petition, the maximum salary for a [REDACTED] “Senior Psychiatrist (Specialist), Correctional and Rehabilitative Services (Safety)” is \$23,496 a month, which is a higher monthly salary than that of the petitioner.

conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.<sup>6</sup>

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.

---

<sup>6</sup> We maintain *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, we maintain 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 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).