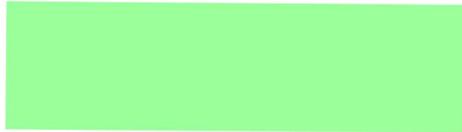
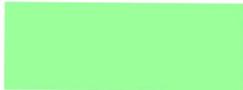


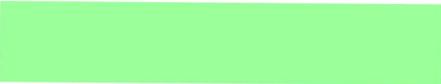
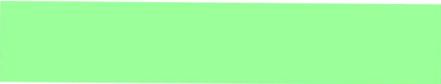


U.S. Citizenship  
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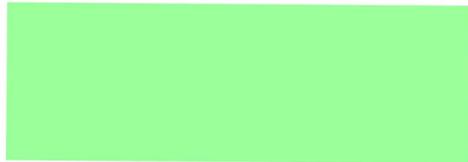


DATE: **DEC 15 2014** Office: TEXAS SERVICE CENTER FILE: 

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:



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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, an announcer and actor, seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts.<sup>1</sup> The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability. The director also determined that the petitioner had not submitted evidence that he will continue to work in his area of expertise in the United States.

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 of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3) or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, 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.

On appeal, the petitioner submits a brief. In the brief, the petitioner contests the director's findings that he did not meet the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (viii). In addition, the petitioner argues that the director failed to assess whether the submitted evidence qualifies under the remaining categories of evidence at 8 C.F.R. § 204.5(h)(3). The petitioner states:

The [Act] and 8 CFR 204.5(h)(3) list ten evidentiary criteria that the government must consider in determining whether an alien has satisfied his burden to prove that he is an individual of extraordinary ability. In the Service's denial, it merely analyzed the Petitioner's evidence against the three above-referenced categories. In a footnote in its denial notice, the Service notes that it did not consider other categories because the Petitioner did not allege that his evidence qualifies under other categories. See USCIS Denial at page 3, FN 2. This is inaccurate. The Petitioner did not submit any statement in either his I-140 petition or his RFE response alleging that his evidence should be considered in particular categories. Counsel did submit cover letters noting particular evidentiary categories, but this should be irrelevant. The Service is required to conduct its own independent analysis of ALL 8 CFR 204.5(h)(3) categories. See *AFM [Adjudicators Field Manual]* Chapter 22.2(i)(1)(A). See also *Matter of Skirball*, ID 3752, 25 I&N Dec. 799, at 805-06 (AAO 2012) (holding that documents submitted by a petitioner that meets evidentiary requirements cannot be ignored by the Service absent a reasoned explanation as to why the evidence is either not credible or doesn't meet regulatory requirements).

Despite counsel's assertion to the contrary, paragraph (1)(A) of Chapter 22.2(i) of the *AFM* does not state that "[t]he Service is required to conduct its own independent analysis of ALL 8 CFR

<sup>1</sup> According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on June 29, 1997 as a B-2 nonimmigrant visitor for pleasure.

204.5(h)(3) categories.” Rather, the AFM cautions adjudicators that they cannot conclude that if an individual claims to be extraordinary, specific types of evidence must be presented. Additionally, the petitioner’s reliance on *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012) is misplaced. *Matter of Skirball Cultural Center* involved a regulation in an unrelated nonimmigrant visa classification that expressly requires the submission of affidavits from experts. The AAO discussed the weight to be afforded to expert opinions, and held that U.S. Citizenship and Immigration Services (USCIS) may not reject the factual conclusions of experts if they are reliable, relevant and probative. The present matter relates to whether USCIS has an affirmative responsibility to evaluate evidence presented by a petitioner when that petitioner has not made a claim that the evidence meets a specific regulatory category of evidence.

At the time of the filing of the petition and in response to the director’s request for evidence (RFE), the petitioner only claimed eligibility for the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (viii). Counsel argues that his previous “cover letters noting particular evidentiary categories” should be disregarded as “irrelevant.” The burden is on the petitioner 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). It is not the director’s responsibility to infer or second-guess the intended criteria. USCIS will consider all of the petitioner’s evidence for any regulatory criteria under which he specifically claims eligibility, but it is not required to consider all ten categories of evidence if no arguments or relevant evidence was submitted for the remaining categories.

On appeal, the petitioner contends that he also meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), but does not claim eligibility for any remaining categories of evidence. In addition, the petitioner argues that he will continue to work in his areas of expertise as an actor and announcer.

## 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.

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. 723 101<sup>st</sup> 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, internationally 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).

The submission of evidence relating to at least three criteria 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>

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

The director determined that the petitioner established eligibility for this criterion. For the reasons outlined below, a review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the director's determination on this issue will be withdrawn. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

The petitioner's initial evidence for this regulatory criterion included letters, articles, and certificates in the Nepali language that were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). This regulation requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. *Id.* The director's August 21, 2013 request for evidence (RFE) specifically instructed the petitioner to submit certified English language translations for all non-English language documents. Despite the director's RFE, the petitioner failed to submit properly certified English language translations of the documents in the Nepali language.

Instead, the petitioner submitted multiple copies of an October 22, 2013 "Translator Certification" from [REDACTED] stating: "I hereby certify that I am fluent in the Nepali and English languages and that the attached are accurate translations of all letters and articles submitted herewith." The record contains multiple photocopies of the preceding translator certification document, none of which specify the documents to which they pertain. The submission of multiple copies of the same translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a certified English language translation. Without properly certified English language translations specifying each Nepali language document to which they relate, we cannot determine if the translator has actually reviewed the document in question. Thus we cannot assign any weight to the petitioner's documents in the Nepali language.

The petitioner submitted an August 2, 1991 "Letter of Appreciation" from [REDACTED], [REDACTED] stating that he was "awarded as a best actor for his role at [REDACTED]." In addition, the petitioner submitted a December 30, [REDACTED] "Letter of Honor" from [REDACTED] for his "outstanding lead role in the movie [REDACTED]." The petitioner also submitted a "[REDACTED]" certificate ([REDACTED] from the [REDACTED] stating that he was "a Best Actor for his outstanding performance in [the] feature film '[REDACTED]'" The petitioner states that he received these awards from the [REDACTED] and that they are the equivalent of the [REDACTED] which is awarded by the [REDACTED]. The petitioner, however, submitted no evidence from the [REDACTED] confirming his receipt of these awards and no evidence that the awards are the equivalent of the [REDACTED] award.

The petitioner's documentation also included a certificate from the "[REDACTED]" – [REDACTED] for "his creditable contribution as an Announcer." The petitioner also submitted a certificate from [REDACTED] stating that he was "awarded as an Actor of the Decade for his outstanding performance in various [REDACTED]" As previously explained, the English language translations accompanying the aforementioned documents do not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no supporting documentary evidence demonstrating that the preceding honors were nationally or internationally recognized awards for excellence in the fields of acting or announcing.

The petitioner submitted a November 14, 1997 letter from [REDACTED] Director of the Department of Drama, [REDACTED] asserting that the petitioner received an "excellent award in [REDACTED] for theatre," but the petitioner did not submit a copy of the award. According to the regulation at 8 C.F.R. § 103.2(b)(2)(i), only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Moreover, 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). The petitioner also submitted an August [REDACTED] article in [REDACTED] mentioning his "Best Actor of [REDACTED] award from the [REDACTED] but the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In addition, there are no objective circulation figures showing that news in [REDACTED] is indicative of national or international recognition. In this instance, the petitioner has not shown that primary and secondary evidence of his [REDACTED] award from the [REDACTED] is not available or nonexistent. Furthermore, there is no documentary evidence showing that the award is a nationally or internationally recognized award for excellence in the field.

The aforementioned August [REDACTED] article in [REDACTED] also mentioned the petitioner's "Excellent [REDACTED] of the Year" award from [REDACTED]. In addition, the petitioner submitted a December [REDACTED] article in [REDACTED] mentioning that he received an Excellent Announcer Award ([REDACTED]) for the weekly radio program [REDACTED], and Best TV Actor Awards for "[REDACTED]" and "[REDACTED]". The petitioner also submitted a July [REDACTED] article in [REDACTED] mentioning that he received an Excellent Announcer Award from [REDACTED] for his weekly program. Again, the English language translations accompanying the aforementioned articles do not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the petitioner submitted a September [REDACTED] article in [REDACTED] stating: "[The petitioner] was rewarded time by time as the '[REDACTED]' by [REDACTED] [REDACTED] for his '[REDACTED]' and 'Best Actor' for his feature film '[REDACTED]' in the '[REDACTED]' by [REDACTED]". There are no objective circulation figures showing, however, that news in [REDACTED], and [REDACTED] is commensurate with national or international recognition.

The petitioner submitted a December 1, [REDACTED] letter from [REDACTED], First Secretary, [REDACTED], Washington, D.C. stating: "Among the major awards [the petitioner] has won include Best Actor of [REDACTED] for his role in TV serial [REDACTED], Excellent Radio Announcer of [REDACTED], Best Actor of [REDACTED] for his role in the drama titled [sic] '[REDACTED]' and Best actor of [REDACTED] for his role in the TV Serial '[REDACTED]'." [REDACTED] mentions that the petitioner received the preceding "major awards," but his statement is not sufficient to establish that the awards were nationally or internationally recognized prizes or awards for excellence in the field. USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field).

The petitioner submitted a Certificate of Appreciation from the [REDACTED] in the [REDACTED] Maryland for contributing "his talent as a Master of Ceremony in [REDACTED]." The petitioner also submitted a Recognition Letter [REDACTED] from the [REDACTED] expressing appreciation to the petitioner for his assistance, dedication, and service as a moderator of programs. In addition, the petitioner submitted a 2009 article posted on the website of the [REDACTED] mentioning that the [REDACTED] presented him with a "Letter of Appreciation" for "his outstanding contributions to the [REDACTED] and abroad." The [REDACTED] article was not properly certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no objective documentary evidence specifying the number of online visitors to demonstrate that the [REDACTED] website's news is indicative of national or international recognition. The petitioner also submitted an [REDACTED] Distinguished Service Award [REDACTED] for "[REDACTED]" [REDACTED]. Additionally, the petitioner submitted a June 25, 2013 letter from [REDACTED] President of the [REDACTED], stating that the petitioner has been a member of the society's Board of Directors and acts as a Master of Ceremony at [REDACTED] events. With regard to the Certificate of Appreciation from the [REDACTED] the Recognition Letter and Letter of Appreciation from the [REDACTED] [REDACTED], and the [REDACTED] Distinguished Service Award, these honors constitute institutional recognition from [REDACTED] organizations that the petitioner has served rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a "[REDACTED] Community Award" [REDACTED] from the [REDACTED] [REDACTED] that he received at a [REDACTED]. In addition, the petitioner submitted a press release about the meeting and online articles mentioning his award posted on the websites of the [REDACTED] [REDACTED], [REDACTED], and [REDACTED] [REDACTED]. In addition, the petitioner submitted a webpage displaying a letter he wrote about his "[REDACTED] Community Award" that was posted on the "[REDACTED]" online forum at [REDACTED]. There is no objective documentary evidence specifying the number of visitors to the preceding websites to demonstrate that their news is indicative of national or international recognition. Furthermore, the press release was sent to multiple editors and publishers in order to encourage them to develop articles on the [REDACTED]. As such, the press release was not indicative of independent media reportage or the petitioner's [REDACTED] Community Award or evidence of its national or international recognition.

With regard to the preceding awards for acting and announcing, the petitioner did not submit evidence demonstrating their national or international recognition. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's awards were recognized at a level commensurate with nationally or internationally recognized acclaim for excellence in the field. Accordingly, the petitioner has not established that he meets this regulatory 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.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility.

The petitioner submitted a September 6, 2011 "Certification of Accurate Translation" from [REDACTED] stating that he was "competent and efficient in the Nepali and English language, and that the attached articles are true and correct translations that were translated by [him] from Nepali to English to the best of [his] ability." In addition, the petitioner submitted multiple photocopies of the October 22, 2013 "Translator Certification" from [REDACTED] stating: "I hereby certify that I am fluent in the Nepali and English languages and that the attached are accurate translations of all letters and articles submitted herewith." Although the record contains the preceding blanket translation certifications, they do not specify the documents to which they pertain. Again, the submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Without properly certified English language translations specifying each Nepali language document to which they relate, we cannot assign any weight to the petitioner's articles in the Nepali language.

In addition to the improperly certified English language translations, we note other deficiencies in the submitted published material.

The petitioner submitted articles about him in [REDACTED] entitled "[REDACTED]" (March 7, 1992) and "[REDACTED]" (October 17, 1992), but the author of the articles was not identified as required by the plain language of this regulatory criterion. In addition, the petitioner failed to submit evidence such as objective circulation figures to show that [REDACTED] is a form of major media.

The petitioner submitted an interview of him in [REDACTED] (1997), but the title of the article and its author were not identified. The petitioner also submitted an article about him in [REDACTED] (2003) entitled "[REDACTED]" In addition, the petitioner submitted information about [REDACTED] from its Facebook page stating that the publication is "the second most read newspaper in [REDACTED]" USCIS, however, need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). There is no objective documentary evidence showing that [REDACTED] and [REDACTED] are major media.

The petitioner submitted a December [REDACTED] article about him in [REDACTED] entitled "[REDACTED]". The petitioner also submitted information from [REDACTED] stating that [REDACTED] "is the oldest national newspaper from [REDACTED]" but the petitioner failed to submit evidence such as objective circulation figures to show that the newspaper is a form of major media. In addition, the petitioner submitted the *Wikipedia* entry for [REDACTED]

stating that the publication is “the oldest national daily newspaper of [REDACTED]” With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the source. In response to the director’s RFE, the petitioner submitted an editorial discussing the history of [REDACTED] that was posted on the newspaper’s website at [REDACTED]. Again, USCIS need not rely on self-promotional material. There is no circulation evidence showing the distribution of [REDACTED] relative to other [REDACTED] publications to demonstrate that the submitted article was published in a form of major media.

The petitioner submitted an article about him and his spouse in [REDACTED]), but the title of the article and its author were not identified. The petitioner also submitted information posted at [REDACTED] stating:

[REDACTED] Newspaper Information

The [REDACTED] is a weekly tabloid published in [REDACTED]. It generally publishes opinions and sensational breaking "news" that is followed by other national dailies. Its background is tilted to the left but known for exposing the irregularities of the Left Movement as well [REDACTED] has the largest circulation among the weeklies all over [sic] the country & it leads 80 percent of the print media of [REDACTED] this has been certified by [REDACTED] government's Audit Bureau of Circulation (ABC), its editor [REDACTED] also represents the editors in Press Council [REDACTED], which is an active member of the world association of press councils (WAPC). He had been jailed for twice during the autocratic panchayat regime struggling for the democracy. [The petitioner] has been working in media sector since last 24 years whereas [REDACTED] has the history of Seventeen and Half years.

The two misspellings of [REDACTED] and multiple instances of incorrect punctuation in the preceding paragraph diminish the reliability of the online content at [REDACTED]. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner has not established that [REDACTED] is a form of major media.

<sup>3</sup> 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](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on September 26, 2014, copy incorporated into the record of proceeding.

The petitioner submitted a June 15, 2011 article about him in [REDACTED] entitled “[REDACTED],” but he failed to submit objective circulation figures for [REDACTED] to demonstrate that it is a form of major media.

The petitioner submitted articles about him in [REDACTED] and [REDACTED], but the title of the articles and their author were not identified. In addition, there is no documentary evidence showing that the preceding publications are major media.

The petitioner submitted a February 1997 article in [REDACTED], an April 1997 article in [REDACTED], and a June 1997 article in [REDACTED] but the title of the articles and their author were not identified. In addition, the articles are about the feature film “[REDACTED]” rather than the petitioner. The plain language of this regulatory criterion requires “published material about the alien.” Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at \*1, \*7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). The petitioner also submitted information about [REDACTED] and the [REDACTED] media group from the company’s own website, but USCIS need not rely on self-promotional material.

The petitioner submitted an “[REDACTED]” of him posted at [REDACTED] but the date and author of the material were not identified. In addition, the petitioner did not submit objective documentary evidence specifying the number of visitors to the [REDACTED] website to demonstrate that it qualifies as a form of major media.

The petitioner submitted an article about him in [REDACTED] entitled “[REDACTED],” but the date of the article was not identified. In addition, there is no evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a February 7, 2003 article in [REDACTED] entitled “[REDACTED]” In addition, the petitioner submitted information from the website of [REDACTED] publisher, [REDACTED], stating the publication is a “a national bimonthly feature magazine” and that the company’s five periodicals have a “combined circulation and readership” making “the media group the most influential in the ethnic Indian market.” Again, USCIS need not rely on self-promotional material. The petitioner did not submit evidence such as objective circulation figures showing that [REDACTED] is a form of major media in the United States or any other country.

The petitioner submitted articles in the [REDACTED] entitled “[REDACTED]” (July 14, 2011), “[REDACTED],” and “[REDACTED].” The date of the latter two articles was not identified. In addition, the three [REDACTED] articles are not about the petitioner and his work as an actor or announcer. Instead, the articles are about the growing population of [REDACTED] living in the [REDACTED] and services available to them from the community group [REDACTED].

The petitioner submitted a November 2011 article in [REDACTED] entitled ‘ [REDACTED] ,’ but the author of the article was not identified. In addition, the article was about the “ [REDACTED] ” cultural program rather than the petitioner. Moreover, there is no evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a June 2011 article about him in [REDACTED] entitled “ [REDACTED] ” but there is no evidence demonstrating that [REDACTED] is a form of major media.

The petitioner submitted a July 2012 article about him in the “ [REDACTED] ” section of [REDACTED] , but the author of the article was not identified. In addition, the petitioner submitted information about [REDACTED] from its website and from a January 3, 2012 article in [REDACTED] . The January 3, 2012 article mentions that the [REDACTED] , launched on December 17, 2011, but the article says nothing about the [REDACTED] publication or its circulation. There is no evidence such as objective circulation figures showing that [REDACTED] is a form of major media.

The petitioner submitted a January 2013 article in [REDACTED] , entitled “ [REDACTED] ” The petitioner also submitted an August 24, 2013 article about him in [REDACTED] entitled “ [REDACTED] ” The preceding articles, however, were published subsequent to the filing of the Form I-140 petition on August 2, 2012. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Accordingly, we cannot consider the January 2013 and August 2013 articles as evidence to establish the petitioner’s eligibility at the time of filing.

The petitioner submitted a May 2011 article in [REDACTED] entitled “ [REDACTED] ” and an article he wrote for the [REDACTED] program entitled “ [REDACTED] ” The 2013 [REDACTED] article post-dates the filing of the Form I-140 petition and therefore does not establish the petitioner’s eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Furthermore, the [REDACTED] article and the [REDACTED] article constitute commentaries authored by the petitioner, not published material about him. Therefore, the material does not meet the plain language requirements of this regulatory criterion. The regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).<sup>4</sup> Furthermore, the petitioner has not established that [REDACTED] and the [REDACTED] program are major media.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

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

<sup>4</sup> The petitioner, however, does not claim to meet the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi). Even if the petitioner made such a claim, which he did not, the “ [REDACTED] ” and “ [REDACTED] ” articles are not “scholarly” articles and were not published in professional or major trade publications or other major media.

The petitioner did not specifically claim eligibility for this regulatory criterion initially or in response to the director's RFE. Therefore, the director did not make a determination as to whether the petitioner meets this criterion.

On appeal, the petitioner asserts for the first time in these proceedings that "he has made original contributions of major significance to his field." The petitioner states:

As discussed in the letters from [REDACTED] the [p]etitioner produces and hosts his own television show on [REDACTED], which is the first 24-hour TV network in the U.S. for [REDACTED] and his program is among the most popular on the network, earning it a prime-time slot as well as broadcast distribution internationally (note: his program is one of only a couple programs broadcast abroad). In his program, as described in [REDACTED] letter, the Petitioner helps educate his viewers by covering and discussing U.S. political issues, immigration matters, [REDACTED] affairs, and other important matters. His program is therefore original in that it is among the first of its kind produced for [REDACTED] viewers on the first 24-hour network in the U.S., and it is certainly significant because it helps educate viewers, makes them more aware and in-tuned to affairs in [REDACTED] encourages them to become more involved in political and [REDACTED] affairs, etc.

The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic contributions "of major significance in the field." 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted a letter from [REDACTED], Chief Executive Officer (CEO), [REDACTED] New York, stating:

I write in regards to [the petitioner], who hosts one of the most popular weekly programs on our network, [REDACTED]. [The petitioner] has a well-established background in announcing and acting and is among the leading national figures in his field in the [REDACTED] community.

\* \* \*

[REDACTED] is the first 24 hour [REDACTED] television station outside of [REDACTED]. Our station was launched in December 2011 and is aired throughout the U.S. and Canada via cable [REDACTED], worldwide via [REDACTED] (a satellite station), and in [REDACTED]. . . . [W]e estimate our viewership at over half a million and growing.

[The petitioner] was invited by [REDACTED] to host his own weekly talk show. He was selected as a candidate because of his reputation as one of the [REDACTED] community's leading national public figures and because of his strong experience as an announcer, emcee and

actor. His selection was made by our producer who is a former executive at [REDACTED] and who helped launch our network.

[The petitioner] is now host of the weekly talk show, "[REDACTED]," which in English means "[REDACTED]." In his show, [the petitioner] provides his interpretation on news and topics in North America that are relevant to the [REDACTED] community. [The petitioner] is 100% responsible for the content of his show, in other words, he selects and develops all content for his program. This show has become one of our most popular programs. In fact, it has become so popular that we have selected this and one other program among our lineup to air internationally and to [REDACTED]. No other programs of ours are broadcast abroad. This is a testament to the popularity of his program. With this international syndication, [the petitioner's] program is aired throughout the U.S., in [REDACTED] and other [REDACTED] expatriate markets such as India, Canada, Australia, European Union, Malaysia, Indonesia, Japan, South Korea, United Arab Emirates, Qatar and Saudi Arabia. For his services, [the petitioner] is currently paid \$600 per week, but as our network grows, we will increase his salary.

Mr. [REDACTED] states that the petitioner is the host of "[REDACTED]" and that the show is "one of the most popular weekly programs on our network, [REDACTED]." Although Mr. [REDACTED] estimates that the [REDACTED] network has a "viewership at over half a million and growing," he does not provide specific viewership figures for the petitioner's "[REDACTED]" program from a television ratings measurement company such as Nielson. There is no evidence showing that petitioner's program has affected the field of television announcing in a major way, has earned high ratings among U.S. or [REDACTED] audiences for a substantial period of time, or has otherwise risen to the level of original contributions of major significance in the field. Mr. [REDACTED] also mentions that the petitioner's program has international syndication, but there is no documentary evidence showing that his work is of major significance in the field of television announcing.

In addition, the petitioner submitted a letter from [REDACTED] Managing Director, [REDACTED] stating:

[The petitioner] has his own TV program that is broadcast nationally, throughout the U.S., and to [REDACTED] as well. He researches and develops all the content for the program, like a producer, but he also appears on TV and broadcasts the content, like a news anchor or announcer. He is able to produce his own content because of his breadth of knowledge of issues important to the [REDACTED] community and because of his extensive network of contacts he has built in the [REDACTED] community over the years. This allows him to easily secure interviews with leading figures in our community. Only very well-connected professionals can produce programs like [the petitioner].

\* \* \*

[REDACTED] is the first 24 hour [REDACTED] station outside [REDACTED]. Therefore, our role in the spectrum of TV networks is very important. [REDACTED] essentially rely on us for their news, for commentary on social and cultural issues, and for entertainment. Although our audience is primarily of [REDACTED] descent, I strongly feel that our program benefits US

interests immensely. Firstly, we help educate [REDACTED] to better understand political, legal, economic and other important issues. This helps them become better citizens and more active members of society in general. Therefore all of American society benefits from this. Also, our program helps to strengthen the [REDACTED] community, helping them become better connected around issues important to our communities across the U.S. This cultural development aspect to our program is important to U.S. interests as well.

Ms. [REDACTED] notes that the petitioner produces and hosts a television show that focuses on issues important to the [REDACTED] community in the United States, but fails to provide specific examples of how the petitioner's original work was of major significance in the field. It is not enough to be a talented television producer and announcer and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion. There is no documentary evidence showing that the petitioner's program has affected the broadcast industry, has influenced the work of other television announcers or program hosts, or otherwise constitutes original contributions of major significance in the field.

As previously discussed, the petitioner submitted a January 3, 2012 article in [REDACTED] stating:

[REDACTED] 28, and [REDACTED] 26, are two of the young faces of the fledgling station that debuted in December. [REDACTED] is geared in part to [REDACTED] growing [REDACTED] communities of [REDACTED].

\* \* \*

Its goals are twofold: to educate residents of [REDACTED] about life in the United States and to inform [REDACTED] immigrants about what's happening in their homeland.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited primarily to [REDACTED] communities of New York. *See Visinscaia v. Beers*, 4 F.Supp.3d at 134 (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).

The petitioner submitted an additional letter from Mr. [REDACTED] stating:

[The petitioner] has hosted the program [REDACTED] on our network. We originally invited [the petitioner] to host this show because he is one of the most involved and recognized civil rights advocates and figureheads in the [REDACTED] community. The idea behind creating this show was to educate and connect members of [REDACTED] communities across the country by engaging them in politics, encouraging them to be active members of their communities, keeping them aware of news relevant to them, etc. In fact, [REDACTED] means "to communicate or 'to assimilate'" and the show's motto is "community empowerment through media."

[The petitioner] has done an outstanding job. He produces this show completely on his own, developing ideas for topics, developing story lines and content, arranging interviews, etc. The show has become one of our most popular and is viewed all over the country, and in fact is one of only a few programs that is also broadcast internationally. Through this program, [the petitioner] has greatly impacted our [redacted] communities across the country. To explain, I provide a few examples to illustrate this impact. [The petitioner] recently produced a program on immigration reform. He educated viewers on the issues at stake and about the impacts to our communities. He also encouraged viewers to contact Congress to express their views, and through feedback we have been informed that many of our viewers took action. [The petitioner] also has produced several shows about worker rights. . . . [The petitioner] produced programs on and encouraged his viewers to participate in and support the minimum wage rallies in Albany, the May Day rallies on immigration, paid sick day rallies, etc. In addition to such call to action type programs, [the petitioner] also produces many programs that seek to educate his viewers about [redacted] culture, politics, etc. For example, he interviews many celebrities and experts from [redacted]. Also, on January 12th, 2013, [the petitioner] filmed an episode featuring a roundtable of journalists and media personnel called "[redacted]," in which he discussed many issues that affect and should be important to [redacted]. These and similar programs aim to educate our viewers and make a more educated and thus empowered [redacted] community in the U.S.

In his second letter, Mr. [redacted] mentions that the petitioner produced shows on immigration reform, worker rights, and [redacted] culture and politics, but fails to provide specific examples of how the petitioner's shows have affected the field at a level commensurate with artistic contributions of major significance. In this matter, the petitioner seeks immigration classification as an alien of extraordinary ability as an actor and announcer rather than as a television producer. Specifically, on the Form I-140, in Part 5, the petitioner listed his "Occupation" as "Actor/Announcer." In addition, under Part 6, "Basic information about the proposed employment," the petitioner listed his "Job Title" as "Actor/Announcer" and the "Nontechnical Description of Job" as "Serve as announcer and master of ceremonies at events for various cultural, social and political organizations." The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (holding that "[i]t is reasonable to interpret continuing to work in one's 'area of extraordinary ability' as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field.") Additionally, Mr. [redacted] comments on the petitioner's projects (such as the January 12, 2013 episode entitled "[redacted]") that post-date the filing of the Form I-140 petition on August 2, 2012. Again, the petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, television programming that was broadcasted after August 2, 2012 cannot be considered as evidence to establish the petitioner's eligibility at the time of filing.

The opinions of the references from [redacted] are not without weight and have been considered above. 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 reference letters 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 795-796; *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"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a television host or announcer who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this regulatory 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 regulatory criterion and found that the petitioner failed to establish his eligibility.

On appeal, the petitioner asserts that he performed in a leading or critical role as host of "[redacted]" for [redacted] as an announcer for [redacted] events, as master of ceremonies and moderator for the [redacted] in 2013, and as an announcer of the weekly entertainment program "[redacted]". In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment.

With regard to his role as host of "[redacted]," the petitioner did not submit sufficient evidence showing that his role was leading or critical for [redacted]. Mr. [redacted] asserts that the petitioner "hosts one of the most popular weekly programs" on the [redacted] network, but Mr. [redacted] letter and the two letters from Mr. [redacted] do not explain how the petitioner's role differentiated him from the other hosts and producers who run popular programming for the network, let alone [redacted] executive managers. The submitted documentation does not differentiate the petitioner from the network's other announcers and managers so as to demonstrate his leading role, and fails establish that he contributed to [redacted] in a way that was significant to its success or standing in the television industry. Furthermore, there is no documentary evidence showing that [redacted] has a distinguished reputation relative to other television networks. For example, the January 3, 2012 article in [redacted] refers to [redacted] as a "fledgling station that debuted in December 2011." Additionally, while the petitioner submitted information from [redacted] media kit, the self-promotional material is not sufficient to demonstrate that the network has a distinguished reputation.

Regarding his role for the [redacted], the petitioner submitted a June 25, 2013 letter from [redacted] President of the [redacted], stating that the petitioner has been a member of the society's Board of Director's and acts as a Master of Ceremony at [redacted] events. In addition, the petitioner

points to the Distinguished Service Award that he received from the [REDACTED]. As a member of the [REDACTED] Board of Directors and as a Master of Ceremony at [REDACTED] events, we agree with the petitioner that he has performed in a leading role for the society. The petitioner, however, did not submit documentary evidence showing that the [REDACTED] has earned a distinguished reputation.

In regard to his serving as master of ceremonies and moderator for the [REDACTED], the petitioner's roles post-date the filing of the Form I-140 petition and therefore do not establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

With respect to his role as an announcer of the weekly entertainment program "[REDACTED]" for [REDACTED], the petitioner submitted a November 7, 2013 letter from [REDACTED] Deputy Director, Program Division, [REDACTED] [REDACTED], stating:

[REDACTED] is the one and only state owned radio station in [REDACTED] and [REDACTED] broadcasts program on Short Wave, Medium Wave and FM frequencies. [REDACTED] is the most reliable and popular means of communication in [REDACTED] despite the recent outreach of many TV stations because of rural demographic and general people's accessibility. On top of that FM programs were initially started in the premises of [REDACTED] at [REDACTED].

It is my great pleasure to officially certify that [the petitioner] one of the renowned and award winning program announcer of popular music and film base[d] weekly radio program "[REDACTED]" used to be affiliated at the [REDACTED] since [REDACTED] to [REDACTED]. . . . The program "[REDACTED]" grabbed the year [REDACTED] Audience Choice Award and used to be aired every Saturday at 11:00 am which is been considered a prime time spot.

[The petitioner's] proclaimed radio program was the undoubtedly one of the best show among two dozen similar and various radio programs and he used to work with popular female radio announcers [REDACTED] and [REDACTED].

As previously discussed, the petitioner submitted improperly certified English language translations of articles stating that he received an Excellent Announcer Award in [REDACTED] for his weekly program on [REDACTED]. For example, the petitioner submitted an August 1995 article in [REDACTED] that mentioned the petitioner's "Excellent Announcer of the Year" award from [REDACTED]. In addition, the petitioner submitted a December 1997 article in [REDACTED] mentioning that he received an Excellent Announcer Award ([REDACTED]) for the weekly radio program "[REDACTED]". Furthermore, the petitioner submitted a July 1994 article in [REDACTED] mentioning that he received an Excellent Announcer Award from [REDACTED] for his weekly program. Again, without properly certified English language translations specifying each [REDACTED] language document to which they relate, we cannot assign any weight to the petitioner's articles in the [REDACTED] language.

Although the letter from [REDACTED] shows that the petitioner performed in a leading role for the "[REDACTED]" radio program, the improperly certified English language translations of the preceding articles have no probative value in demonstrating that the radio program has a distinguished reputation. Moreover, there is no documentary evidence showing that the petitioner's work as an announcer for that program translates to a leading or critical role for [REDACTED]. The petitioner did not provide an organizational chart or other similar evidence to establish where his role as announcer for "[REDACTED]" fit within the overall hierarchy of [REDACTED]. The submitted documentation does not differentiate the petitioner's role from the other announcers and [REDACTED] staff so as to demonstrate his leading role, and fails establish that he contributed to the station in a way that was significant to its success or standing in the broadcast industry. Furthermore, while the petitioner submitted information about [REDACTED] from its website, that self-promotional material is not sufficient to demonstrate that it has a distinguished reputation relative to other radio stations that were operating in [REDACTED] in the latter half of the 1990s.

In light of the above, the petitioner has established that he meets this regulatory criterion.

#### B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

### III. CONTINUING WORK IN THE AREA OF EXPERTISE IN THE UNITED STATES

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. *Id.*

The petitioner submitted a January 6, 2012 letter from [REDACTED] CEO of [REDACTED], stating: "We are very humble and pleased to offer you an employment as an Anchor at our [REDACTED] television channel, [REDACTED]. [W]e will be able to pay you [ ] six hundred U.S. dollars [ ] per week as a [sic] compensation of your contributions at this phase." In addition to the job offer letter, the petitioner submitted a letter from Mr. [REDACTED] explaining that the petitioner hosts a weekly program on [REDACTED]. The director determined that "[t]he petitioner did not submit evidence of his intent to continue to work in his field of extraordinary ability as an actor/announcer." As a television host and anchor is equivalent to working as an announcer, and the job offer letter from the CEO of [REDACTED] is among the types of evidence specified in the regulation at 8 C.F.R. § 204.5(h)(5), we withdraw the director's determination on this issue.<sup>5</sup> Accordingly, the petitioner has established that he seeks to continue to work in his area of expertise in the United States.

<sup>5</sup> According to the U.S. Department of Labor's *Occupational Outlook Handbook*, 2014-15 Edition, "Announcers present music, news, and sports and may provide commentary or interview guests about these topics or other important events. Some act as masters of ceremonies (emcees) or disc jockeys (DJs) at

#### IV. 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 has risen to the very top of his or her 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 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.

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weddings, parties, or clubs.” *See* <http://www.bls.gov/ooh/media-and-communication/announcers.htm>, accessed on December 2, 2014, copy incorporated into the record of proceeding.

<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).