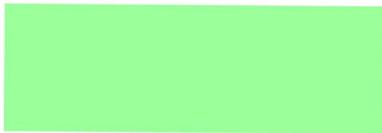




U.S. Citizenship
and Immigration
Services

(b)(6)



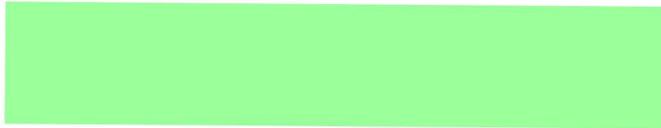
DATE: DEC 29 2014

Office: TEXAS SERVICE CENTER

FILE:

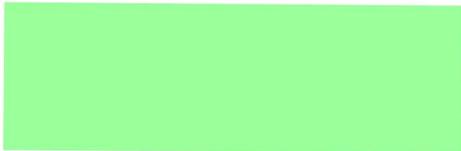


IN RE: Petitioner:
Beneficiary:



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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” as a singer and actress, 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 who 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 that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

For the reasons discussed below, we agree that the petitioner has not established her 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 she is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

A review of the director’s decision reflects references to letters from [REDACTED] as well as references, in response to the director’s request for evidence (RFE), to letters from [REDACTED]. The letters, however, were not in the record of proceeding. On October 30, 2014, we requested the petitioner, via fax to the petitioner’s counsel at the number listed on the Form I-290B, Notice of Appeal or Motion, to resubmit the letters within 30 calendar days. As of this date, we have received nothing further. Accordingly, the record is considered complete as it now stands, and we will make a determination on the petitioner’s appeal based on the evidence that is contained in the record of proceeding.

I. LAW

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

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

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international

acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the alien's sustained acclaim and the recognition of the alien's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets 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, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th 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 (9th 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 Criteria¹

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

¹ 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.

sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

A review of the record of proceeding reflects that the petitioner submitted foreign language documents with the following documentation:

1. A partial translation of an article entitled, [REDACTED]
2. A partial translation of an article entitled, [REDACTED]
3. A partial translation of an article entitled, [REDACTED]
4. A partial translation of an untitled article, on an unidentified date, by an unidentified author, [REDACTED]
5. A partial translation of an article entitled, “[REDACTED] on an unidentified date, [REDACTED] and [REDACTED]
6. A translation of an article entitled, [REDACTED]

Regarding items 1 – 5, the petitioner did not submit full translations of the foreign language documents. Although the translator indicated on each translation that “[t]his is a true partial translation of an article,” the regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As cited above, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a full and certified English language translation. As the petitioner did not comply with the regulation at 8 C.F.R. §103.2(b)(3), the partial translations have no probative value and cannot be accorded any weight. Moreover, as the petitioner did not submit full English language translations of the articles, the petitioner has not demonstrated that the articles are published material about her relating to her work in the field. Furthermore, regarding items 3 – 5, the petitioner did not include the title, author, and/or date of the material as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the petitioner did not submit any documentary evidence establishing that [REDACTED] are professional or major trade publications or other major media.

Regarding item 6, the article reflects published material about the petitioner relating to her work in the musical field. The petitioner, however, did not submit any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or other major medium.

The petitioner also submitted the following documentation:

7. A screenshot entitled, “[REDACTED]” with an unidentified author and date, [www.\[REDACTED\]](#)
8. A screenshot entitled, “[REDACTED]” with an author and date, [www.\[REDACTED\]](#) (source credited as [www.\[REDACTED\]](#))
9. A partial screenshot entitled, “[REDACTED]” author and date unidentified, [www.\[REDACTED\]](#)
10. A screenshot entitled, “[REDACTED]” with the author and date not identified, [www.\[REDACTED\]](#) (source credited as [www.\[REDACTED\]](#));
11. A screenshot entitled, “[REDACTED]” with an unidentified author and date, [www.\[REDACTED\]](#) (source credited as [www.\[REDACTED\]](#));

12. A screenshot entitled, [REDACTED] with an unidentified author and date, www. [REDACTED] (source credited as www. [REDACTED]; and
13. A screenshot entitled, [REDACTED] with an unidentified author and unidentified date, www. [REDACTED] (source credited as www. [REDACTED]).

Regarding items 7 – 13, the petitioner did not include the author and date of the material as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, although the screenshots reflect material about the petitioner relating to her work, the petitioner did not submit any documentary evidence establishing that the material was published in professional or major trade publications or other major media.

As evidenced above, the majority of the petitioner’s documentary evidence does not comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring “the title, date, and author of the material, and any necessary translation.” In addition, the petitioner did not submit full English translations of the foreign language articles as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, although the petitioner submitted an article and screenshots reflecting material about her and her work, the petitioner did not establish that the material was published in professional or major trade publications or other major media. The burden is on the petitioner to establish every element of this criterion. For these reasons, we withdraw the decision of the director for this criterion.

Accordingly, the petitioner did not establish that she meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) 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 rise to the level of original 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 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner refers to her previously submitted compact disc entitled, [REDACTED] which she claims “is composed of purely original songs which were written and composed by her,” and a letter from [REDACTED] who confirmed that the company is in the process of recording the petitioner’s second cd, and the recording should last between eight to ten months. Regarding the petitioner’s first cd, the petitioner did not submit any documentary evidence establishing that her compact disc has been of major significance in the field. The petitioner, for example, did not submit any documentary evidence reflecting the impact or influence the cd has had on the music industry, so as to demonstrate an original contribution of major

significance in the field. Furthermore, submitting a sample of the petitioner's work is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) without submitting documentary evidence establishing that her work has been of major significance.

Moreover, Mr. [REDACTED] stated that the petitioner's second album is in the process of being produced and recorded and has yet-to-be-released. The petitioner has not established that her second compact disc has already been a contribution of major significance in the field. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

In addition, the petitioner claims on appeal that she "has been invited several times to award ceremonies for [REDACTED]." The petitioner submitted two photographs of herself and one photo posing with another individual with handwritten notations indicating [REDACTED]. The photographs do not establish that she was invited to the award ceremonies. Regardless, the petitioner has not demonstrated how her invitations can be considered original contributions of major significance in the field. The petitioner also claims on appeal that "[s]he has had the opportunity to work with gran [sic] celebrities such as [REDACTED] (pictures attached)." Although the petitioner submitted photographs, the petitioner did not submit any documentary evidence establishing how her work with celebrities resulted in any original contributions of major significance in the field.

In response to the director's request for evidence (RFE), the petitioner submitted a May 22, 2013 letter from [REDACTED]. On appeal, the petitioner submitted another letter from Mr. [REDACTED] also dated May 22, 2013. The petitioner claims that these letters "attest to the fact that [she] has formed part of their events and that for the past 7 years they have had a relationship with her." Although the letters praise the petitioner as "an amazing singer and actress," they offer no evidence of any original contributions of major significance to the field. The letters do not indicate what the petitioner has contributed and how those contributions are considered of major significance in the field.

Furthermore, the petitioner submitted a letter from [REDACTED] Inc., who stated that he became acquainted with the petitioner at a social event in [REDACTED], Florida in 2011 and that "she has a delightful and charismatic personality." None of the letters, however, indicated how the petitioner's talents or personal traits are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department

of Labor through the alien employment labor certification process. See *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998).

The opinions of the petitioner's references 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 singer/actress who has made original contributions of major significance in the field. Cf. *Visinscaia v. Beers*, 4 F.Supp.3d at 134-135 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1115. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Without supporting evidence, the petitioner has not met her burden of establishing her present contributions of major significance in the field. Further, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, the petitioner did not establish that she meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.

On appeal, the petitioner claims that she appeared in a lead role for the [REDACTED]. The petitioner submitted a letter from [REDACTED] Executive Director, who stated that the petitioner’s “acting skills are highly sought [after] and greatly admired by cast and crew alike.” Moreover, Mr. [REDACTED] listed her latest theatrical productions such as [REDACTED]. In addition, the petitioner submitted documentation in a foreign language without any English language translations. Without compliance with the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the evidence has no probative value and cannot be considered for this criterion. The letter from Mr. [REDACTED] does not indicate that the petitioner performed in a leading or critical role for the [REDACTED] or for any of its theatrical productions. Although the letter indicates that the petitioner was involved in the theatrical productions in some capacity, the lack of specific information does not demonstrate that the petitioner’s performances or roles were leading or critical. The petitioner, for example, did not submit any documentary evidence that compared her roles to the other performers, so as to demonstrate that her role was leading or critical. Moreover, the petitioner did not submit any documentary evidence establishing that [REDACTED] or any of its productions have a distinguished reputation as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

The petitioner also submitted an April 11, 2011 letter from [REDACTED] who stated that the group had the pleasure of knowing the petitioner for the past four months and is “planning on working on a musical collaboration with her.” Although the letter was written less than two years prior to the filing of the petition, the petitioner did not submit any documentation evidencing that she ever collaborated with [REDACTED] let alone that she performed in a leading or critical role for the group.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not demonstrated that she meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that she meets this 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. O-1 NONIMMIGRANT STATUS

The petitioner indicated on her Form I-140, Immigrant Petition for Alien Worker, that she was last admitted to the United States on December 29, 2012, as an O-1 nonimmigrant of extraordinary ability. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that “[t]he term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines extraordinary ability as “a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability. Further, an approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record.

Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co., Ltd. v. Sava*, 724 F. Supp. at 1103. Some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

Applications or petitions are not required to be approved where the petitioner has not demonstrated eligibility because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Agencies need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

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.²

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.

² 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).