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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **DEC 29 2014** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before us on motion to reconsider. The motion will be granted, we affirm our previous decision, and the petition remains denied.

The petitioner, a fashion model, seeks classification as an "alien of extraordinary ability" in the arts, 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.¹ The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability and we affirmed the director's determination on appeal.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

In the July 23, 2014 decision dismissing the petitioner's appeal, we determined that the petitioner had not met at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, we determined that the petitioner had satisfied the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii) and affirmed the director's finding that the petitioner had met the category of evidence at 8 C.F.R. § 204.5(h)(3)(iv), but found that the petitioner had not met any of the remaining regulatory criteria.

On motion, the petitioner argues that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (ix) and (x).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citation to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on November 1, 2012 as a B-2 nonimmigrant visitor for pleasure.

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

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 is 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).

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 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 Criteria²

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

In the appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion.

The petitioner submitted evidence indicating that he won "Best Male Model" at the [REDACTED] organized by [REDACTED]. The petitioner also submitted a July 13, 2013 letter from [REDACTED] Event Manager, [REDACTED], asserting that his company "organized a national level model contest at the [REDACTED] Nepal," that the audition for the show had "more than 1000 applicants from all over Nepal, India and Bhutan," and that "[REDACTED] is the biggest part of the event management which organized [] Nepal's biggest event [REDACTED]." In addition, the petitioner submitted an August 2, 2013 letter from [REDACTED], Maryland, stating: "In the year of [REDACTED] I was a panel of judge of [REDACTED] a fashion contest where [the petitioner] won the title "Best Model." There were 30 participants [in] the show The show was organized by [REDACTED] and consisted of about 10000 audiences [sic]."

² 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 submitted a certificate from "[redacted]" stating that he was "successfully awarded as [sic] A Best Catwalk" of the [redacted] show held on [redacted] in [redacted]. The petitioner also submitted an August 22, 2013 letter from [redacted], stating: "[W]e contribute aid to the [redacted] for drug rehab organization and other organization. During the event organizing in the year 1997, the fashion show named [redacted] was held on [redacted] where [the petitioner] won the 'Best Catwalk Award'" In addition, the petitioner submitted an article entitled [redacted] from an unidentified English language publication. There is no circulation data showing that the preceding publication had significant national readership throughout Nepal, or that coverage in the publication was otherwise indicative of garnering national or international recognition. The article stated:

Team models displayed their talent treating a huge crowd strong audience presentation by new models of the Team was also satisfactory [sic].

Although the organizing the show [sic], such shows would have been perfect for them only a they [sic] have been a little more careful about technical problems as well as time table while going about organizing such shows ahead.

The above article then lists the petitioner as one of more than twenty participating models, but it does not mention his receipt of a "Best Catwalk" award, or demonstrate that his award qualifies as a nationally or internationally recognized award for excellence in the field.

The petitioner submitted a "Certificate of Award" stating that the petitioner won "MODEL OF THE YEAR in [redacted] Model & Designer contest." In addition, the August 22, 2013 letter from [redacted] stated that he judged the [redacted] model contest, that the contest had more than 500 applicants from all the parts of Nepal, and that the judges "selected 50 contestants for the contest." The petitioner also submitted a July 18, 2013 letter from [redacted], a professional Nepali model, stating that she judged the [redacted] model contest, that the petitioner posed "in front of approximately 2000 people," and that the "event was one of the biggest hits in our modeling industry." Ms. [redacted] also asserted that the contest was a "yearly event but that year it was big because there were many application and big sponser [sic]."

The petitioner submitted a certificate from [redacted] stating that he won the [redacted] Model Contest on [redacted]. The petitioner also submitted an August 22, 2013 letter from [redacted] stating that her company "provides a platform for all the Nepalese young talents to give an opportunity to work and show their talents to bring them up in the market to support for every sector." Ms. [redacted] further stated: "[The petitioner] . . . won the title of [redacted] as he has proven he can be a better model with his confidence level of his presentation and given a satisfactory answer while responding to the judges by his talent [sic]."

In the July 23, 2014 decision, we determined that the above statements from the contest organizers and judges were not sufficient to demonstrate that the petitioner's awards were nationally or internationally recognized awards for excellence in the field of endeavor. As the information about the preceding contests was provided by those who conducted the events, we mentioned the "self-

servicing nature of the information” submitted. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

On motion, the petitioner states:

The contention that the evidence is of a “self-serving nature” is misplaced. *Black’s Law Dictionary* 496 (4th ed. 1951) describes a self-serving declaration as “One made by a party in his own interest at some time and place out of court; not including testimony which he gives as witness at the trial.” *Black’s Law Dictionary* 2nd ed. defines “self-serving statement” as that which serves the benefit of the speaker. The statements here were not made by the main organizers of the awards, the members of the panel of judges, other modeling professionals, other experts in the field were not themselves solely for their own interests or for their own benefit. These institutions and individuals merely relayed the surrounding factual circumstances of the national awards and prizes Petitioner won due to excellence in his field.

We agree with the petitioner that the statements made by the contest organizers and judges were not made solely for their own interests or for their own benefit, but rather in support of the petitioner. Regardless, their statements commenting on awards from contests which they organized and judged do not show evidence of recognition beyond those who issued the awards. Moreover, a modeling contest may be open to entries from throughout a particular country or countries, but this factor alone is not adequate to establish that a specific award from the competition is “nationally or internationally recognized.”

In addition, the petitioner mentions the August 10, 2013 letter from [REDACTED] Government of Nepal, who states that the petitioner “is the recipient of several national awards in the modeling field” including “[REDACTED] organized by [REDACTED] and [REDACTED]” Mr. [REDACTED] asserts that the petitioner’s two awards were “national level awards.” However, there is no evidence in the record to support Mr. [REDACTED] statement. 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). In addition, 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”). 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).

Although the petitioner submitted information about the preceding modeling contests, he did not submit evidence demonstrating the national or international *recognition* of his particular awards. 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 specific awards were recognized beyond the presenting organizations, the contest judges, or his references at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In the appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion.

On motion, the petitioner asserts that his memberships in [REDACTED] meet the requirements of this regulatory criterion.

The petitioner previously submitted two of his identity cards for [REDACTED] and his "Associate Member" identity card for the [REDACTED]. In the July 23, 2014 decision, we determined that there was no documentary evidence showing that [REDACTED] and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the field. The petitioner's motion does not provide legal arguments or point to any evidence demonstrating that we erred in our determination.

The petitioner submitted a July 23, 2013 letter from [REDACTED] Administration Chief, [REDACTED] that misspells "Film" as "Flim" in the letterhead and that identifies the petitioner as a member. Mr. [REDACTED] asserts that the [REDACTED] grants "membership to the people who have devoted their lives in the media and had occupied outstanding space in the industry," and that the association was established for "extraordinary ability" artists. In our appellate decision, we determined that Mr. [REDACTED] assertions were not probative, stating:

Merely repeating the language of the statute or regulations, however, does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). In addition, Mr. [REDACTED] statements are unsupported by documentary evidence of the [REDACTED] bylaws, constitution, or membership regulations specifying the above criteria. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's motion repeats Mr. [REDACTED] assertion that the [REDACTED] grants "membership to the people who have devoted their lives in the media and had occupied outstanding space in the industry," but does not provide arguments or point to any evidence demonstrating that we erred in our determination. The submitted documentation fails to demonstrate that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the field.

The petitioner submitted an identity card stating that he is a member of [REDACTED]. In addition, the petitioner submitted an August 2, 2013 letter from [REDACTED] Chairman of [REDACTED] stating: "We provide the membership card to all the Nepalese artists who are commercially successful in television through different activities." With regard to Mr. [REDACTED] assertion, our appellate decision stated: "The petitioner has not established that commercial success in one's occupation equates to 'outstanding achievements.' In addition, the submitted evidence does not indicate that [REDACTED] members' achievements are judged by recognized national or international experts their disciplines or fields." The petitioner's motion repeats Mr. [REDACTED] statement, but does not provide arguments or point to any evidence indicating that we erred in our determination.

In light of the above, 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.

In the July 23, 2014 decision, we determined that the petitioner's evidence meets this regulatory criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

As noted in our appellate decision, the evidence supports the director's finding that the petitioner meets this regulatory criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In the appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion stating:

The petitioner submitted a September 1, 2012 letter from [REDACTED] CEO, [REDACTED], stating: "This is to certify that [the petitioner], has been contracted with this agency, as a Model, Actor, and Fashion Choreographer, since 1996. His current yearly average income is approximately around NER 1,500,000.00 (Nepal Rupees One Million Five Hundred Thousand Only)." The petitioner, however, failed to submit documentary evidence

(such as government income tax forms) to demonstrate the actual earnings he received for any specific year. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submitted information from www.salaryexplorer.com entitled "Salary Survey in Nepal." The submitted information included "Maximum: 1,404,000 NPR," "Average: 435,927 NPR," "Median: 300,000 NPR," and "Minimum 96,000 NPR" salary comparison data for workers in Nepal. In addition, the submitted information included salary information for various job categories such as Engineering (396,000 NPR), Information Technology (493,714 NPR), and Marketing (360,000 NPR). As the petitioner has worked as a model, an actor, and a fashion choreographer, the preceding salary data and occupational categories do not represent appropriate bases for comparison in demonstrating that his salary was high in relation to others in his field.

In response to the director's request for evidence, the petitioner submitted a July 12, 2013 letter from Ms. [REDACTED] listing the petitioner as the highest paid among five of her agency's models from 2010 to 2012. In addition, the petitioner submitted an August 19, 2013 letter from [REDACTED] Manager, [REDACTED] stating: "In the year 2002 on 12 June we had contracted with [the petitioner] as a brand ambassador for our hotel promotion. We assigned him NRS 700,000 (Nepalese rupees seven hundred thousand). Compared to other models we paid him more during that time because of his popularity." The petitioner, however, must demonstrate a high salary or other significantly high remuneration for services "in relation to others in the field," not limited only to models who worked for [REDACTED]

In the appellate brief, the petitioner points to unspecified "news articles, testimonials and letters of support attesting to Petitioner's high salary." Other than the aforementioned letters from Ms. [REDACTED] and Ms. [REDACTED] none of the remaining letters and published articles provide specific salary information for the petitioner or demonstrate that his salary was high relative to others in the field.

The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. See *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); see also *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). The petitioner, however, offers no reliable basis for comparison showing that he has received a high salary or significantly high remuneration relative to other models and actors in his field who perform similar work.

As the petitioner did not submit evidence of his actual earnings for any specific year and present a proper basis for comparison showing that he has earned a high salary or other significantly high remuneration for services in relation to others in the field, the petitioner has not established that he meets this regulatory criterion.

On motion, the petitioner does not explain how our analysis of the above evidence was in error. Rather, the petitioner points to additional documents and requests that they be considered for this regulatory criterion. Counsel states:

Evidence submitted by [the petitioner] concerning this criterion were as follows: news articles e.g. [redacted] (a recognized major newspaper in Nepal) article dated January 5, 2001 stating that Petitioner was a famous “top model” in Nepal, . . . testimonials and letters of support attesting to Petitioner’s high salary from [redacted] former Senior Director and Producer of [redacted] among others.

With regard to the articles in [redacted] the regulations contain a separate criterion for published material about the alien at 8 C.F.R. § 204.5(h)(3)(iii), a criterion the petitioner has already met.

The English language translation accompanying the January 5, 2001 article in [redacted] that was submitted in response to the director’s request for evidence states:

After a grand success of [redacted] the young singer [redacted] had just completed the shooting of his new music video [redacted] in a few days back.

The main interesting part of this music video has an international Swiss female model [redacted] along with the famous top male model [the petitioner]. There are so many music videos where they had shot only a few scenes with an International model but this is the first time making a whole video with an International model. Swiss model [redacted] had played as a role of [redacted]

[redacted] channel going to Premier this music video on January [redacted] This video is directed by [redacted] make-up by [redacted] camera by [redacted] All the outfits design for this video by [redacted] (London based designer).

The above article does not provide any information regarding the petitioner’s specific salary or remuneration. Moreover, media coverage of one’s work as a model does not necessarily equate to commanding a high salary or significantly high remuneration relative to others in the field.

The March [redacted] article in [redacted] states that the petitioner “is a popular person in the modeling business” and gained his popularity “from an international brand advertisement of [redacted] beer.” The article, however, does not provide any information regarding the petitioner’s salary or remuneration.

In his August 5, 2013 letter, [REDACTED] Chairman of [REDACTED] stated that his company employed the petitioner as a model for various advertisements and asserted that the petitioner's "pay is higher than any other model." Mr. [REDACTED] however, does not specify the amount his company paid the petitioner or provide any objective compensation statistics demonstrating that the petitioner's remuneration was significantly high in relation to others in the field. Again, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15; *see also Visinscaia*, 4 F.Supp.3d at 134-35.

In his August 2, 2013 letter, [REDACTED] asserts that the petitioner worked on a [REDACTED] beer commercial that was "the most expensive TV commercial in Nepal." Mr. [REDACTED] letter, however, does not indicate the amount of remuneration that the petitioner received for appearing in the commercial.

The July 18, 2013 letter from [REDACTED] Treasurer of the [REDACTED] Nepal, states that the petitioner "is a top model celebrity" of Nepal, but does not provide any specific information regarding the petitioner's salary or remuneration.

The petitioner further states:

We submit that the evidence substantially complies with the standard in *Grimson v. INS*. Petitioner earns high salary or significantly high remuneration in comparison to those performing similar work during the same period. Designating someone "famous top model" or "most famous" in news articles published in major media arguably demonstrates his salary was high compared to others in his field. Thus, there was substantial compliance with the regulatory requirement herein.

The petitioner's argument is not persuasive. In *Grimson v. INS*, 934 F. Supp. 965, 967 (N.D. Ill. 1996), the "plaintiff submitted evidence of his current salary and contract with the Detroit Red Wings" and "a table from the *Hockey News* showing the 1996 players' salaries." In the present matter, the petitioner did not submit documentary evidence of his actual earnings for any specific year or present a proper basis for comparison showing that he has earned a high salary or other significantly high remuneration for services in relation to others in the field.

Lastly, the petitioner mentions *Buletini v. INS*, 860 F.Supp. 1222, 1232, n.12 (E.D. Mich. 1994) in which the court found that the appropriate comparison was with others in the field in the country where the alien worked rather than with members of the field in the United States or internationally. We do not contest this principle. Regardless, it remains the petitioner's burden to submit proper evidence demonstrating that his remuneration was significantly high relative to others in the field. The petitioner has not done so in this proceeding.

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

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

In the appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion.

On motion, the petitioner states:

Petitioner's commercial success as a fashion model relative to others in Nepal is evident in his body of work and in his career milestones. He starred in the most expensive commercial in Nepal, collaborated with international models, is one of the most sought-after brand ambassadors and is widely known as a "famous top model" which indicates that he has bested others in his industry.

The petitioner submitted photographic evidence of his participation in television commercials and advertising campaigns; letters of support and published material commenting on the petitioner's work as a model, an actor, and a fashion choreographer; magazine and catalogue photographs showing his modeling work; and marketing material from the hospitality and beverage industry containing photographs of the petitioner. Although the submitted documentation shows that the petitioner has secured employment in his field, the petitioner failed to submit documentation of "sales" or "receipts" demonstrating his commercial successes in the performing arts. For instance, while the petitioner is a member of and has worked as an actor, the fact that the petitioner has performed in film or television productions would be insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales and box office receipts reflect the petitioner's commercial success relative to others involved in similar pursuits in the performing arts. In the present matter, there is no documentary evidence of receipts or sales demonstrating that the petitioner has achieved commercial successes relative to others in the performing arts field.

The petitioner further states: "[The petitioner] is currently the choreographer for 2014 to be held this . He is also a runway model for A this September 2014. He is a model for , an international modeling agency in Alabama." Regarding the petitioner's contention on appeal that he worked as a choreographer and model in 2014, eligibility must be established at the time of filing the petition. 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 petitioner's work that occurred after April 29, 2013 as evidence to establish his eligibility at the time of filing.

In light of the above, the petitioner has not 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. 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.³

The petition remains denied 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 July 23, 2014 decision is affirmed and the petition remains denied.

³ 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).