

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JUL 23 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:
[REDACTED]

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

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 on appeal. The appeal will be dismissed.

The petitioner, a fashion model, 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.¹ The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a brief and additional evidence. In the brief, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (ix), and (x).

I. LAW

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established

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.

either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which we did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as we concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria³

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

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] stating:

In 1997, from Sept. 20-28th, on the occasion of the [REDACTED], we had organized a national level model contest at the [REDACTED]. We had an audition from all over the country and even from the neighbor country who were

² Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

interested in modeling. We received more than 1000 applicants from all over Nepal, India and Bhutan. We had selected 30 contestants for the final show.

[The petitioner] had won for the [redacted]. His uniqueness [sic] modeling talents with his impressive performance helped him to achieve title award of the show, judged by (Nepal Television producer & director) Mr. [redacted] (CEO [Chief Executive Officer] of [redacted] Ms. [redacted] (Senior fashion model) Mr. [redacted] and (fashion photographer) Mr. [redacted].

[redacted] is the biggest part of the event management which organized the Nepal's biggest event [redacted] where producers from different part of the world come to collaborate in the exhibition to sell their merchandise. So, during this exhibition, all the Nepalese people show up to be the part of the exhibition. So, therefore, every once in a year, we organized the [redacted] festival fashion show to give opportunity for our models to improve their talents in international grade.

In addition, the petitioner submitted an August 2, 2013 letter from [redacted] of [redacted] Maryland, stating:

I was the Senior director and a producer of [redacted]

* * *

In the year of 1997, I was a panel of judge of [redacted] a fashion contest where [the petitioner] won the title [redacted] There were 30 participants and the show was judged by [redacted] (Fashion Choreographer), [redacted] (Ramp CEO) and myself. The show was organized by [redacted] and consisted of about 10000 audiences.

The petitioner submitted a certificate from [redacted] stating that he was "successfully awarded as A Best Catwalk" of the [redacted] show held on May 3, 1997 in [redacted] at [redacted]. The petitioner also submitted an August 22, 2013 letter from [redacted] President, [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, 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] In addition, the aforementioned letter from Mr. [redacted] stated:

[I]n the year 1999, [redacted] the model and designer contest was held at [redacted] [redacted] The titles were categorized as “Model of the year,” “1st Runner-Up,” and “2nd Runner-up,” where for the designers, “Designer of the year” is the only title was [sic] given. For this model contest, we had more than 500 applicants from all the parts of Nepal where we had selected 50 contestants for the contest. [The petitioner] had won the title award whereas [redacted] and [redacted] had won the first and second runner-up respectively. The final judges were senior model [redacted], executive producer/director of [redacted] Fashion Beautician Ms. [redacted] fashion magazine photographer Mr. [redacted] and myself.

The petitioner also submitted a July 18, 2013 letter from [redacted], a professional Nepali model, stating:

In the year of 1999 I was one of the panel judges for [redacted] (model & designer contest) organized by [redacted] [The petitioner] has won Best Model award for his extraordinary performance way he walk [sic], best posing in front of approximately 2000 people, that really attracts all of us. The event was one of the biggest hits in our modeling industry. There was a model participant from all over from Nepal. Approximately, there were more then [sic] 500 applicants but 50 models were slected [sic] for the competition. It is 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 Mr. [redacted] [redacted] The petitioner also submitted an August 22, 2013 letter from [redacted] Choreographer, [redacted] stating:

[redacted] is the event management in Nepal where we organize the fashion shows, model contests and musical events for the upcoming new talents of the nations. Basically, [redacted] 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.

[The petitioner] has successfully 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.

The self-serving nature of the information from the preceding contest organizers and judges fails to demonstrate that the petitioner's awards are nationally or internationally recognized awards for excellence in the field of endeavor. 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). 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 submitted an August 10, 2013 letter from [REDACTED] stating:

[The petitioner] has won many national awards throughout the years and internationally he worked in [REDACTED]

* * *

He is the recipient of several national awards in the modeling field. Out of them most remarkable awards he received [REDACTED] (national level award) organized by [REDACTED] (national level award) organized by The [REDACTED]. Similarly he has received other awards like [REDACTED] and [REDACTED].

Mr. [REDACTED] asserts, without supporting evidence, that two of the petitioner's awards were "national level awards." 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*, 2013 WL 6571822, at *4, *6 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). Regardless, there is no documentary evidence showing that the petitioner's awards were "nationally or internationally recognized" in the field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, 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. 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.

The petitioner submitted two of his identity cards for [REDACTED] and his "Associate Member" identity card for the [REDACTED]. There is 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 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. 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. Shrestha's statements are unsupported by documentary evidence of the FAAN's 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 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 the [REDACTED]. In addition, the petitioner submitted an August 2, 2013 letter from [REDACTED] Chairman of [REDACTED] stating:

[The petitioner] also [sic] a member of the organization as he is a commercially successful model in Nepal. Besides, the ramp modeling, his success in acting skills in advertisement and music videos [sic].

We provide the membership card to all the Nepalese artists who are commercially successful in television through different activities.

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 members' achievements are judged by recognized national or international experts their disciplines or fields.

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.

The petitioner submitted various articles from newspapers and magazines in Nepal. A number of the submitted articles were about the petitioner. The director determined that the petitioner had not submitted circulation figures for the publications and that the submitted material did not relate to the petitioner and his work in the field. On appeal, the petitioner submits objective circulation evidence demonstrating that at least two articles about him were published in major media in Nepal. As the submitted documentation is sufficient to demonstrate published material about the petitioner in major media, the director's findings are withdrawn. Accordingly, the petitioner has established that he 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.

The evidence supports the director's finding that the petitioner meets this regulatory criterion. For example, the petitioner submitted documentation showing that he judged modeling contests such as [REDACTED] and the 2007 [REDACTED]. Accordingly, the petitioner has established that he meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he 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.

The petitioner submitted a September 1, 2012 letter from [REDACTED] CEO, [REDACTED] [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 [REDACTED] entitled [REDACTED]. 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 [REDACTED] 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.

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

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 [REDACTED] and beverage industry [REDACTED] containing photographs of the petitioner. The plain language of this regulatory criterion, however, requires "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The petitioner does not explain how modeling work or fashion choreography constitutes "the performing arts." Furthermore, although the above 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 [REDACTED] 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 in the television or film industry relative to other actors in the field.

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

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 the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.

⁴ The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).