



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JUL 25 2014**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 26, 2012. The petitioner subsequently filed a motion to reconsider, which the director dismissed on December 4, 2012. The petitioner then filed a motion to reopen, which the director dismissed on September 20, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” in education, as a professor of law and economics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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.

On appeal, the petitioner asserts that the director made multiple errors of fact and law in his prior decisions relating to the I-140 petition. Specifically, the petitioner asserts that the director erred in concluding that petitioner had not documented a one-time achievement or submitted evidence sufficient to meet at least three criteria. The petitioner also raises several arguments on appeal relating to work authorization, advance parole, a pending I-485 application, and delayed processing times. The only form before us on appeal, however, is the Form I-140, and this decision is limited to that petition.

## 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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, 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.<sup>1</sup> 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 the AAO 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 the AAO 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.*

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<sup>1</sup> 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).

## II. ANALYSIS

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

#### 1. One-Time Achievement

The director determined that the petitioner did not meet the requirement for a one-time achievement, as outlined in 8 C.F.R. § 204.5(h)(3). In asserting that the one-time achievement requirement was met, the petitioner submitted documentary evidence showing that he won the [REDACTED]. Specifically, the petitioner submitted (1) an attestation from [REDACTED] Coordinator of an unidentified organization, affirming that the petitioner won the [REDACTED] in the Single Judge category, (2) a photograph of the petitioner at an Innovare event with a caption from an unidentified source attesting to the award, and (3) an [REDACTED] confirming that the petitioner is the author of an award-winning project in the Individual Judge category.

As evidence of the significance of this award, the petitioner initially submitted a webpage from the [REDACTED] website which states:

The objective of the prize Innovare is to identify, reward and disseminate innovative practices carried out by magistrates, members of the State and federal Prosecutors, public defenders and public and private lawyers from all over Brazil, which are increasing the quality of judicial service and contributing to the modernisation of [ ] Brazilian justice.

The petitioner also submitted an online article stating that a practice in the Dominican Republic won the first International category of this award in [REDACTED]. The article specifically states that [REDACTED] included an International category for the first time in [REDACTED], five years after the petitioner's award. In response to the director's Request for Evidence (RFE), the petitioner submitted an online article from [REDACTED]. The article states that the [REDACTED] recognizes the top [REDACTED] for improving the quality of its justice system, and does not indicate that an international [REDACTED] prize existed prior to [REDACTED]. Similarly, the other new materials relating to the International Prize [REDACTED] on or after [REDACTED] do not indicate that the International Prize [REDACTED] existed prior to [REDACTED]. The one new article discussing a pre-2010 awardee, from [REDACTED] states: "[REDACTED] was created in Brazil in [REDACTED] to recognize, award and foster knowledge about innovative practices in [the] Rule of Law among Brazil's judiciary, prosecutors, public defendants and lawyers." This article does not suggest that the award had an international component prior to [REDACTED].

Based on this information, the director concluded that the petitioner had not established that he had won an international version of the [REDACTED]. In the motion to reconsider, the petitioner asked that the director reconsider that conclusion without explaining how the director erred. The director reaffirmed the initial determination. In the motion to reopen, the petitioner no longer asserted that this

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

award is a major internationally recognized award. On appeal, the petitioner asserts: “The affidavits and documents attached had showed that [redacted] is internationally recognized as one of the top awards for Judges of America, Europe and [the] United Kingdom’ by the International Bar Association, Human Rights Institute, Latin Lawyer, Supreme Courts and Attorney General Offices.”

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. The petitioner did not submit independent objective evidence, which establishes that either one of the two types of the [redacted] is a major, internationally recognized award.

Neither the statute nor the legislative history addresses what awards less prestigious and recognized than the Nobel Prize qualify as major, internationally recognized awards. *Rijal v. USCIS*, 772 F.Supp. 2d 1339, 1345 (W.D. Wash. 2011) *aff’d* 683 F.3d 1030 (9<sup>th</sup> Cir. 2012). Congress felt it unnecessary and perhaps inadvisable to define “major” in this context and, instead, entrusted that decision to the administrative process. *Id.*

As stated by the director, the petitioner has not established he won the [redacted] which did not exist in 2005 when the petitioner won the [redacted]. The petitioner has not established that his national level prize is a one-time achievement, defined as a major internationally recognized award. For example, the petitioner did not submit evidence that, prior to 2010, the professional, trade or general media at a global level covered the issuance of these awards.

## 2. Remaining Evidentiary Categories

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The petitioner has submitted the following evidence pursuant to this criterion:

- 1.
- 2.
- 3.
- 4.
- 5.



The petitioner does not continue to assert that the last three items are qualifying, and the petitioner did not establish that they are more than local or regional in scope. Moreover, the fourth item does not name the petitioner.

The director concluded that [REDACTED] is nationally recognized, but is only one award for a criterion that, consistent with the statutory requirement for extensive evidence at section 203(b)(1)(A)(i) of the Act, requires awards or prizes in the plural. On appeal, the petitioner asserts that the Diploma of Merit of Accounting is also nationally recognized.

Regarding the Diploma of Merit of Accounting, the petitioner submitted, along with the certificate for the award, an English-language 1992 resolution by a Brazilian authority that addresses the selection process for the Diploma of Merit. The document bears no indicia that it is a copy from an official publication or downloaded from a website. Without documentation of the source of this information, the document has limited probative value. Moreover, the selection criteria indicate that while both the Federal Accounting Council and Regional Accounting councils can name candidates, it is the Federal Accounting Council that selects the winners by majority vote. The petitioner's certificate, however, is from the Regional Council of Accounting of the State of Sao Paulo. Moreover, the resolution states that the diplomas recognize "those that have distinguished themselves in a remarkable or relevant [way] and contributed directly or indirectly, for the improvement and enhancement of the supervisory bodies of the profession." The petitioner's diploma, however, recognizes only "relevant and good professional services rendered to the accounting profession and society." Thus, the petitioner has not established that his certificate from a regional authority is the same certificate that the resolution addresses. The petitioner, therefore, has not established that it is a nationally recognized award for excellence.

Accordingly, the petitioner did not establish his eligibility for this 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. 8 C.F.R. § 204.5(h)(3)(ii).*

The director determined that the petitioner did not satisfy the requirements of the regulation. The petitioner has discussed membership in several associations, but on appeal relies solely on membership in the following:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

The petitioner also relies on his election as a Counselor of the [REDACTED]. The petitioner asserts that only an extraordinary professional can have five memberships in different fields of research. The petitioner further asserts that the requirement for outstanding achievements for counselors of the [REDACTED] is apparent from the small number of counselors.

Along with the Form I-140 petition, the petitioner submitted copies of his membership cards for various associations without any evidence pertaining to the membership requirements for the associations. Moreover, these cards do not all match the associations the petitioner discusses. Instead, the cards represent the petitioner's (1) lawyer's identification from the Bar Association of [REDACTED]; (2) Professional Identity card from the [REDACTED] of the [REDACTED] and (3) identity card from the [REDACTED] confirming the petitioner's license. The director requested evidence of the membership requirements, including the associations' constitution or by laws. In response to the RFE, the petitioner noted that the Brazilian Bar exam has a low passage rate, asserted that the [REDACTED] requires a difficult proficiency exam, inferred a requirement of outstanding achievements for the [REDACTED] from the small number of members, and asserted that [REDACTED] requires membership in the Brazilian Bar.

In support of his assertions, the petitioner submitted (1) an article about a change in insurance law that does not mention any association's membership requirements; (2) requirements for registration as a [REDACTED] including an examination; (3) an article noting that in December 2010, only 9.74 percent of applicants passed the Brazilian bar exam; (4) one page of the [REDACTED] that does not address bar membership requirements; and (5) information from [REDACTED] website affirming that the association is the largest membership association for Latin American and "perpetuates itself as a bulwark in defending the prerogatives of unrestricted Class Counsel." Finally, the petitioner submitted information about the Board of Directors of [REDACTED] that discusses the board's mission, but does not suggest that it is an association with membership or discuss any membership requirements.

At issue is not the number of associations of which the petitioner is a member, but the membership requirements of those associations. The petitioner has not submitted the associations' constitution, bylaws or equivalent information confirming the membership requirements and selection process for these associations. With respect to the IBA, the petitioner only documented that he is a licensed actuary. A license is not a membership. *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(C) and (E). Regardless, with respect to this license and the petitioner's accounting and bar memberships, these credentials are based on a professional proficiency examination. Demonstrating the minimum proficiency to practice in a field, even as the result of a competitive examination, is not an outstanding achievement in that field.

With respect to the petitioner's elected position, on appeal, the petitioner asserts that only 36 members of the [REDACTED], which has [REDACTED] members, are elected to be a Counselor. As such, the petitioner asserts that being a Counselor requires outstanding achievements judged by recognized national and international experts. The record includes a letter and accompanying translation from the [REDACTED] which states: "[the petitioner] was elected to the position of Effective Counselor of this [REDACTED] for the period 1998/2001, having been sworn on January 5<sup>th</sup> 1998." While the letter confirms that the petitioner was a Counselor, the letter does not indicate that selection to the post required outstanding achievements or that membership is judged by national or international experts. Consequently, record does not contain evidence supporting the petitioner's claims. 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

(Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Accordingly, the petitioner did not satisfy the plain language requirements of 8 C.F.R. § 204.5(h)(3)(ii).

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

The petitioner submitted the following evidence in support of this criterion:

1. A letter indicating the petitioner's presentation will be published on a consortium's web site;
2. A copy of online comments made on [www.time.com](http://www.time.com), which include the petitioner's comment;
3. The first few pages of searches for the petitioner's name on Google and Bing;
4. Various instances where the petitioner's name appears in a "Bibliography" section;
5. An online document with no visible web address titled, [REDACTED];
6. An online document from Google Translate with an incomplete title; and
7. Online articles that the petitioner authored.

The director requested evidence documenting that the materials appeared in professional or major trade publications or other major media. In response, the petitioner submitted a [REDACTED]

While the petitioner asserted that the newspaper is "the biggest newspaper of Latin America," the information the petitioner submitted about the [REDACTED] does not confirm that claim about the newspaper. First the information discusses the group's website and multiple publications, such as [REDACTED] At issue is not the size of the [REDACTED] but the circulation of the newspaper that carried the article, [REDACTED] The director concluded the article was not about the petitioner.

In support of his first motion, the petitioner submitted evidence that *Time Magazine* published his letter to the editor and other articles that mention him by name but are not about him. The director affirmed his initial determination, concluding that the evidence did not constitute published material about the petitioner in professional or major trade journals or other major media. On appeal, the petitioner asserts that the director erred because the petitioner has more "citations" than [REDACTED]

A review of the submitted evidence indicates that the director correctly determined that the petitioner did not meet the regulatory requirements for this criterion. The articles and letter to the editor are not published material about the petitioner. The regulation views authored articles as a separate evidentiary requirement from published materials. *Compare* 8 C.F.R. § 204.5(h)(3)(vi).

The petitioner did not submit evidence of thousands of citations. Rather, he submitted the results from online searches for his name. A list of results from a search on an online search engine does not demonstrate that any one of the results constitutes published material that is about the petitioner and appears in a professional or major trade journal or other major media. The petitioner has not established

that the actual articles he submitted constitute published material about the petitioner in professional or major trade journals or other major media.

The inclusion of the petitioner's name in a bibliography that lists several references does not demonstrate that the article referencing the petitioner's work is about the petitioner. Thus, those bibliographies do not meet this criterion.

Accordingly, the petitioner has not established his eligibility for this 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. 8 C.F.R. § 204.5(h)(3)(iv).*

The director determined that the petitioner established his eligibility under 8 C.F.R. § 204.5(h)(3)(iv) and the record supports the director's determination in this regard.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).*

The director determined that the submitted evidence did not establish the petitioner's eligibility for this criterion. The petitioner submitted the following evidence in support of this criterion during these proceedings:

1. Published material about [REDACTED]
2. A letter from [REDACTED] Brazil;
3. A letter from [REDACTED] Governor,  
[REDACTED]
4. A letter from [REDACTED]  
[REDACTED], SA;
5. A letter from [REDACTED]  
Brazil;
6. Email correspondence from [REDACTED]  
[REDACTED]
7. Evidence that the petitioner authored four books and two book chapters;
8. A printed webpage of articles published in an accounting class portal;
9. Portions of selected bibliographies;
10. Google scholar search results.

On appeal, the petitioner asserts that "National Recognition Week" took place as a result of the petitioner's win of the [REDACTED] and was a subsequent effort to implement the petitioner's manner of practice across Brazil. The published material about [REDACTED] however, postdates the petitioner's award by six years and does not mention the petitioner, the title of his project, or the [REDACTED]. As stated above, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

While the petitioner asserts that he was the mentor and creator of the questions for the Proficiency Examination of certified public accountants in Brazil, the record does not support that claim. Mr. [REDACTED], in a letter addressed to the petitioner, thanks the petitioner for his “invaluable contribution made by you to the [REDACTED] during our administration. This collaboration contributed significantly to the development and recognition of our profession.” Mr. [REDACTED] however, makes no mention of the proficiency examination and does not explain the petitioner’s role in rewriting that examination. 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).

The letter from Mr. [REDACTED] acknowledges the Governor’s receipt of the petitioner’s book and congratulates the petitioner on its publication. The two-sentence letter is akin to a constituent letter responding to an unsolicited submission and is not indicative of the petitioner’s impact in his field.

In addition, the letters and email correspondence from Mr. [REDACTED] Mr. [REDACTED], and Dean [REDACTED] are vague and any discussion of contributions is limited to the impact that the petitioner had on their specific organization or on a specific event. For instance, Mr. [REDACTED] writes:

We would like to reiterate our congratulations for your brilliant presentation, which caused a very positive impact on the participants, thanks to the quality and professionalism demonstrated by you, giving auditors the opportunity to recycle and extend their knowledge in the professional field, thus our goals have been met.

[REDACTED] solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010).

Regarding the petitioner’s authorship of four books and two book chapters, the petitioner has not submitted supplemental evidence that indicates that the books or the book chapters impacted the field as a whole. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at \*6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Furthermore, the regulations contain a separate criterion regarding authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(vi). Therefore, the regulation views contributions as a separate evidentiary requirement from authorship or scholarly articles absent evidence that the articles have had an impact indicative of a contribution of major significance.

Similarly, the webpages and bibliographies do not demonstrate an impact on the petitioner’s field as a whole. The list of reading material for a class that appears on a web portal only demonstrates the applicability of those materials to a specific accounting class. There is no indication that the articles on the web portal were available outside the context of one accounting class. The petitioner has not explained how such limited access could impact the field as a whole. *See Visinscaia*, --- F. Supp. 2d ---, 2013 WL 6571822, at \*6. Furthermore, as noted above, the regulations contain a separate criterion regarding authorship of articles. The selected bibliographies that the petitioner submitted, which show that an item that the petitioner authored appears in the bibliography of a text, do not include

the information regarding the citing articles and some bear no indicia of publication. These printed pages from various bibliographies, because they provide no context, lack probative value.

The Google Scholar results are not indicative of the number of citations to the petitioner's work. While the Google results are for the petitioner's full name in quotation marks, the Google Scholar results are for a limited portion of his name. Thus, the search provided results from other individuals who have a similar name, including an individual with ' [REDACTED] in his name. Also, the results include all references to his name rather than simply those articles that cite the petitioner's articles, books, or chapters. Therefore, the results do not show a list of scholarly articles whose authors have relied upon and cited the petitioner's work. Moreover, they are in the aggregate and cannot demonstrate that any one of the petitioner's articles garnered widespread attention in the field.

Accordingly, the petitioner has not established his eligibility under 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The director concluded that the petitioner met this criterion and the record supports the director's conclusions regarding the petitioner's eligibility pursuant to this criterion.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The petitioner initially submitted evidence under this criterion along with his Form I-140. The director determined in his decision that the petitioner did not meet the requirements of the regulation. The petitioner does not raise this issue on appeal. Therefore, the petitioner abandoned this claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11<sup>th</sup> Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

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 was responsible for the success or standing of the organization or establishment. Moreover, a role is essentially experience, and the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience shall consist of letters from current or former employers. Thus, the petitioner's assertion that the evidence he submitted under this criterion is not from current or former employers does not support a finding that he submitted the requisite evidence.

Regardless of whether the authors represent the petitioner's current or former employer, the content of the letters does not support the petitioner's claim to meet this criterion. In support of this criterion, the petitioner claims he submitted letters from: (1) the President of the [REDACTED] (2) the former [REDACTED] regarding the appointment as a Judge at the Court of Tax; and (3) the Governor of [REDACTED]. As discussed above, the letter from Mr. [REDACTED] of the [REDACTED] does not identify a specific role the petitioner performed for the council and does not provide specific examples of the petitioner's impact on that organization. The letter from Mr. [REDACTED] is not from the Governor of the [REDACTED] but the head of his office, is two sentences long, and appears to be a response to the petitioner's unsolicited submission of his book. [REDACTED] confirms the petitioner's appointment as "an effective member of the [REDACTED]. Mr. [REDACTED] does not explain how that role fits within the overall hierarchy of the court or provide examples of the petitioner's impact on the court. Merely repeating the language of the statute or regulations 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*, 1997 WL 188942, at \*5 (S.D.N.Y.).

Finally, Dr. [REDACTED] asserts that the petitioner "performed a leading role for the [REDACTED] as [the] Vice President of [the] [REDACTED]. Dr. [REDACTED] does not explain his direct knowledge of this position. As stated above, evidence of experience must be in the form of letters from the petitioner's current or former employers. 8 C.F.R § 204.5(g)(1). Moreover, Dr. [REDACTED] does not describe the petitioner's duties. As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Id.* In addition, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

Accordingly, the petitioner has not submitted evidence that satisfies the plain language requirements for this criterion.

### B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types 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.

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[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. While 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.<sup>3</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> As noted earlier, we maintain de novo review of all questions of fact and law. *See Soltane v. DOJ*, 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* 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).