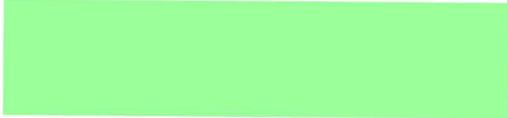




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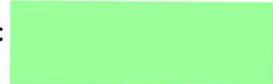
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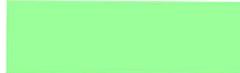
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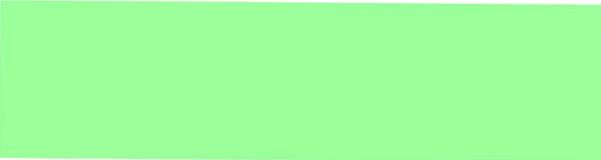
PETITIONER:

BENEFICIARY:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on December 22, 2013. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on January 17, 2014. The appeal will be dismissed.

According to the petition and the accompanying documents filed on October 17, 2013, the petitioner seeks classification as an alien of extraordinary ability in the arts, as an actress and performer in the field of motion picture and television production, 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 that the petitioner has 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present 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)-(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 files no additional supporting documents, although she states in her appellate brief that "[w]e are submitting additional documentation that will further verify and conclusively demonstrate" her accomplishment and recognition in the film and television industry. The petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3) (ii), (iii), (iv), (viii) and (ix). For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. THE 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.

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

In 2010, the U.S. Court of Appeals for the 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 the AAO's decision to deny the petition, the court took issue with our evaluation of the evidence submitted to meet a given evidentiary criterion.¹ 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

¹ 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 (vi).

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 case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, or that she has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. Under the regulation at 8 C.F.R. § 214.2(o)(3)(i), an O-1 nonimmigrant in the motion picture and television industry must show extraordinary achievement. The regulation defines “extraordinary achievement” as “a very high level of accomplishment in the motion picture . . . evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture . . .” 8 C.F.R. § 214.2(o)(3)(ii).

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “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.” While the ten immigrant criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the motion picture and television industry are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(v). As such, a petitioner’s approval for an O-1 nonimmigrant visa in the motion picture and television industry under the lesser standard of “extraordinary achievement” is not evidence of her eligibility for an immigrant visa under the higher standard of “extraordinary ability.”

B. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

² The petitioner does not claim that she meets the regulatory categories of evidence not discussed in this decision.

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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not specifically challenged the director's conclusion. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States 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) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

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 concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion, because she "is a member of the prestigious acting industry organization in Canada, [REDACTED], which selected her due to her achievements and stature." The petitioner has not shown she meets this criterion.

First, the petitioner's membership in [REDACTED] does not meet this criterion. According to [REDACTED] Membership Coordinator, [REDACTED] Toronto, the petitioner has been an [REDACTED] member since November 2006. Ms. [REDACTED] states that "[REDACTED] membership requires that applicants acquire credits by competing with other professional performers to obtain a minimum number of professional engagements in the union's jurisdiction. It is not easy to earn these credits and, as a result, [REDACTED] membership is rightly regarded as both a mark of professional distinction and a sign of serious commitment to the craft and business of performing." The petitioner has not shown that the requirement of "obtain[ing] a minimum number of professional engagements" constitutes "outstanding achievements." Working in an occupation, even a competitive occupation, is not an outstanding achievement in that occupation. In addition, the petitioner has presented insufficient evidence showing that recognized national or international experts have judged the "outstanding achievements," as required by the plain language of the criterion.

Second, the petitioner has not shown that the [REDACTED] of which she is a member, constitutes a qualifying association. According to a letter from [REDACTED] a case manager at the [REDACTED] the petitioner is a member of [REDACTED]. The petitioner has not submitted any evidence relating to how one becomes a [REDACTED] member or if the [REDACTED] requires "outstanding achievements of [its] members, as judged by recognized national or international experts in their disciplines or fields," as required under the criterion.

Accordingly, the petitioner has not presented documentation of her 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 has not met this criterion. See 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 director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. The petitioner has submitted a number of published material, including "Canadian Actress [the Petitioner] Stars as [redacted]" published in the entertainment section of [redacted] Star [the Petitioner] Talks about Playing [redacted] published in [redacted] Actress [the Petitioner] Comes out Swinging in [redacted]," published in [redacted] and "[redacted] published in the [redacted] Accordingly, the petitioner has presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

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 concluded that the petitioner met this criterion. The evidence in the record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

According to a November 20, 2013 letter from [redacted] Director of Finance and Administration, [redacted] Toronto, the petitioner "was asked to serve as a juror for the [redacted] in Toronto [The petitioner] was specifically chosen for this critically important task by virtue of her reputation in the cinematic and television community." Ms. [redacted] letter does not specifically indicate that the petitioner served as a juror. Rather, the letter states that she was invited to serve as a juror. Similarly, other evidence in the record does not specifically show that the petitioner actually served as a juror. Although the evidence shows that the petitioner was invited to serve as a juror, such an invitation, without evidence of the petitioner actually serving as a juror or a judge, is insufficient to meet the plain language of the criterion.

The record also includes evidence that the petitioner participated in a panel discussion during the 2010 [redacted] The petitioner, however, has not submitted any evidence showing that her

participation involved judging the work of others in the same or an allied field, as required by the plain language of the criterion.

Accordingly, the petitioner has not presented sufficient evidence of her 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 petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion because of her role in the television series “ [REDACTED] ” and her performance in other television shows and movies. The petitioner has not shown she meets this criterion.

The petitioner’s performance in the movie [REDACTED] constitutes performing a leading or critical role for an organization or establishment that has a distinguished reputation. Specifically, the petitioner played the role of [REDACTED] in the movie. According to [REDACTED] the petitioner’s role was “one of the lead roles in the film.” According to [REDACTED] the petitioner’s role “was very important to [the] film due to the size of the role and it’s [sic] crucial fight sequences.” Mr. [REDACTED] states that the petitioner’s “final performance was key and essential to the artistic and box office success of the film.” In addition, the evidence in the record, including published material, evidence of the film’s commercial success and receipt of awards, establishes that the film has a distinguished reputation.

Notwithstanding the petitioner’s role in [REDACTED] which constitutes her performing a leading or critical role for an organization or establishment that has a distinguished reputation, the petitioner has not shown she has met this criterion. The plain language of the criterion requires evidence of the petitioner having performed in a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. While the petitioner’s role in [REDACTED] constitutes evidence of the petitioner having performed a leading or critical role for one qualifying organization or establishment, the record lacks evidence that the petitioner has performed a leading or critical role for another qualifying organization or establishment.

Specifically, the petitioner’s involvement in [REDACTED] does not constitute her performing a leading or critical role for a qualifying organization or establishment. The evidence establishes that the petitioner had a recurring role in the television series produced by [REDACTED] a [REDACTED] in the 2012-2013 and 2013-2014 production years. [REDACTED] Executive Producer and Creator of “ [REDACTED] ” states that the petitioner played a character that was “integral to the show and its storyline.” [REDACTED] Co-Executive Producer of

_____ states that the petitioner “play[ed] the lead role of _____ best friend, [the petitioner was] a key central character in the series; she [was] the voice of reason, an ambitious go-getter, and _____ loyal confidante.” Mr. _____ further states that the “series simply wouldn’t be able to go on without her.” _____, an award-winning and international best-selling author, states that the petitioner played a “crucial, critical and leading role in _____ a] primetime television series” and that her role was “a fan favorite that ha[d] helped this series move successfully into a Second Season.”

Although the evidence shows that the petitioner’s role in _____ constitutes a critical role for the television series, the evidence does not establish that the series constitutes an organization or establishment that has “a distinguished reputation,” as required under the criterion. In her appellate brief, the petitioner asserts that the television series is “critically acclaimed.” She does not, however, point to any specific evidence in the record to support of this assertion. Going on record without supporting documentary evidence is not sufficient for the 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)). _____ a producer for _____ states that the series was “a national television show” that started to air on the _____ network in January 2013. Ms. _____ states that it was a “primetime” television series. Neither these two letters nor any other evidence in the record, including published material about the television series, establish that _____ has a distinguished reputation. The record lacks evidence that _____ had won any major or recognized awards in the industry or that there is consensus among critics and industry experts that it had “a distinguished reputation.” The imdb.com printout indicates that the television series was nominated for two _____ Awards in 2013. The petitioner has not demonstrated that the show won either of the two awards. The petitioner has not shown that the nominations establish that the show was critically acclaimed as the petitioner asserts or otherwise had a distinguished reputation. Although the record includes published material about the show, the published material does not include critical reviews; rather, it introduces the cast, announces the renewal of the series, or describes the show without establishing that it had a distinguished reputation in the field.

Moreover, the petitioner’s involvement in other television and movie projects is insufficient to show she meets this criterion. According to an October 16, 2013 imbd.com printout, the petitioner has acted in television shows and movies since 2005. She was casted in a Disney project called _____ a television series named _____. She also played a lead character in the short film “_____”. In her appellate brief, the petitioner asserts that she has been involved in “large scale film and television productions internationally and nationally, which have been produced by a [sic] major television networks and film companies, all with highly distinguished reputation.” The petitioner, however, does not specify what evidence in the record establishes the alleged “distinguished reputation.” Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, at issue is not the television networks’ or film companies’ reputation. At issue is the television and movie projects’ reputation, as the petitioner is claiming to have performed a leading or critical role in the television and movie projects, not a leading or critical

role for the television networks or film companies. Furthermore, the petitioner has submitted a number of Wikipedia articles relating to television stations, networks and production companies. As there are no assurances about the reliability of the content from this open, user-edited internet site, we will not assign evidentiary weight to information from Wikipedia.³ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). Ultimately, the evidence in the record does not establish that the television or movie projects, in which the petitioner was involved, constitute “organizations or establishments that have a distinguished reputation,” as required under the criterion. The evidence is insufficient to show that the petitioner’s projects have a distinguished reputation among the many Television shows and movies produced and released each year in the United States and Canada.

Accordingly, the petitioner has not presented evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion because she has earned over \$250,000 annually. The evidence in record does not establish that the petitioner meets this criterion.

According to a February 17, 2012 Memorandum Agreement for Test with Pilot and Series Options, for her performance in [REDACTED] the petitioner received \$20,000 per episode in the 2012-2013 production year (first year), and \$20,800 per episode in the 2013-2014 production year (second year). According to a December 9, 2013 printout from imdb.com, the petitioner appeared in 18 episodes of “[REDACTED]” a chartered public accountant and certified fraud examiner, who serves as the petitioner’s accountant, states that the petitioner earned over \$250,000 for her work in the first season of “[REDACTED]”. According to a November 14, 2013 letter from [REDACTED], a managing partner at [REDACTED], the petitioner “has consistently

³ Online content from Wikipedia is subject to the following general disclaimer entitled “WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY”:

Wikipedia is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.
... Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 15, 2014, a copy of which is incorporated into the record of proceeding.

brought in over \$250,000 per year over the last few years.” [REDACTED] President of [REDACTED] [REDACTED] states that the petitioner “is a top earner on the [REDACTED] [REDACTED] show, and that she has a very favorable earning potential as compared to many of the individuals on [REDACTED] extensive client list.” Although the petitioner has shown that remuneration for her performance has been at least \$250,000 annually, she has not shown that the amount is considered either a “high salary or other significantly high remuneration for services, in relation to others in the field,” as required under the criterion.

First, the petitioner has submitted an incomplete document that does not establish she meets this criterion. The incomplete document – two pages of a ten-page document – entitled [REDACTED] [REDACTED] indicates that “Major Role” performers for full-hour programs received \$7,674 from July 1, 2012 through June 30, 2013, and \$7,823 from July 1, 2013 through June 30, 2014. According to page two of the document, performers in “Multiple Program (Weekly)” for half-hour and full-hour shows received \$2,240 from July 1, 2012 through June 30, 2013, and \$2,285 from July 1, 2013 through June 30, 2014. This incomplete document does not indicate whether the compensations listed are the performers’ average compensations. It also does not indicate if the compensations listed are for an hour of work, a day of work, an entire show/episode or some other work unit. As such, this incomplete document does not establish what constitutes a high salary in the petitioner’s occupation for comparison purposes.

Second, a showing that the petitioner’s compensation is higher than the minimum payment requirement per episode under [REDACTED] rules is not sufficient to establish the petitioner meets this criterion. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *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).

According to Mr. [REDACTED] November 11, 2013 letter, as “a member of our union [REDACTED] [REDACTED], the minimum per episode (“scale payment”) is \$3,083/episode. [The petitioner], currently an actress in an episodic show, earns a considerably higher salary per episode.” The petitioner has not shown that earning more than the minimum required payment meets this criterion. Moreover, the letter states that the petitioner’s salary “is comparable to other performers of her caliber in the same medium.” Neither this letter nor any other evidence in the record provides information about the high earnings in the occupation regardless of caliber. The criterion requires a comparison between the petitioner’s earning and others in the field, not limiting the comparison to performers of the petitioner’s caliber.

Finally, the record includes online printouts providing average or mean earning statistics for actors. They do not demonstrate that the petitioner meets this criterion. Merely documenting an earning above the average earning in the field is insufficient evidence under the plain language requirements of the criterion, which requires evidence of a high salary in relation to others in the field. In addition, the online printouts either do not specifically relate to the petitioner’s field or do not

provide information to which we can compare the petitioner's annual earning. Specifically, the simplyhired.com printout provides an average salary "for all jobs with the term 'actor' anywhere in the job listing." The information captured thus excludes compensation for acting jobs not posted in a job listing and likely includes stage acting jobs, which is not a field in which the petitioner claims extraordinary ability. *See generally Matter of Price*, 20 I&N Dec. at 954 (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson*, 934 F. Supp. at 968 (considering NHL enforcer's salary versus other NHL enforcers); *Muni*, 891 F. Supp. at 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Similarly, the printouts from the U.S. Bureau of Labor Statistics provide information relating to the average hourly wage, not information relating to annual earning. As the petitioner has not provided information relating to how many hours she has worked to earn at least \$250,000 annually, the petitioner has not provided information relating to her hourly compensation, such that we may compare it to the U.S. Bureau of Labor Statistics printouts.

Accordingly, the petitioner has not presented evidence showing that she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not specifically challenged the director's conclusion. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at *9.

C. Summary

In addition to the evidence discussed above, the petitioner has submitted a number of vague and solicited letters from colleagues that state in general terms that the petitioner is a talented actress and that praise her work and acting abilities. The petitioner has not specifically indicated which criteria, if any, the letters establish. We have considered all evidence in the record and conclude that 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 have 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 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.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

⁵ 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).