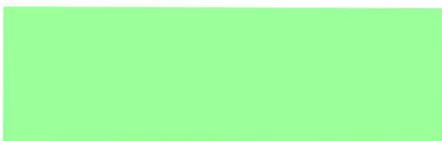


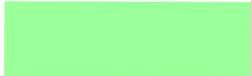


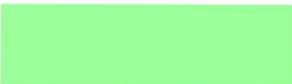
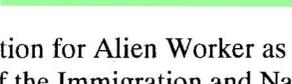
U.S. Citizenship
and Immigration
Services

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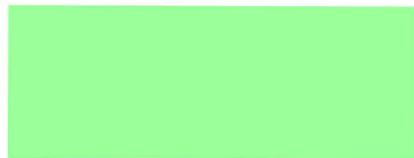
DATE: **OCT 24 2014** Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on October 21, 2013, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 graphic arts. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

On appeal, the petitioner claims that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. LAW

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

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

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

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

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

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

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 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.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.” *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 Criteria²

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Moreover, it is the petitioner’s burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity.

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 8 C.F.R. § 204.5(h)(3)(vi).

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

On appeal, the petitioner claims:

The Service contends that it has not been established that the prizes were given specifically to [him] to recognize his excellence in the field, and indicates that the Awards were given to [redacted] and that [his] name does not appear on the award credits. . . . This summation is made with a cursory and fundamentally flawed interpretation of the graphic design field. Those who work in specialized graphic design firms typically work as part of a design team. As it is a “team-based” field in which individual achievement is only typically measured from a “team standpoint.” Unlike other artists, musicians or scientists, graphic designers from graphic design firms typically collaborate with colleagues on projects throughout the world.

At the initial filing of the petition, the petitioner submitted screenshots from [redacted] reflecting that the book, [redacted] was chosen as one of the [redacted]. According to the screenshot, the designer is [redacted] and the design firm is [redacted]. In response to the director’s request for evidence (RFE) pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted a May 19, 2009 letter from [redacted] director of competitions and exhibitions for [redacted] congratulating him for his selection for the [redacted] competition for his entry, [redacted]. Although the petitioner submitted documentary evidence reflecting his employment as a designer with [redacted] the documentation does not reflect that he was recognized as one of the winners from the [redacted] competition. An award for which the petitioner is not a named recipient is not tantamount to his receipt of a nationally or internationally recognized award. Furthermore, the petitioner did not demonstrate that any of the awards from [redacted] competition are nationally or internationally recognized for excellence in the field. The petitioner submitted additional screenshots from [redacted] regarding the guidelines and the advisory panel for the competition; however the screenshots do not reflect that the awards are recognized by the field as national or international recognition for excellence. The petitioner did not submit any independent, objective evidence establishing that the awards are nationally or internationally recognized for excellence in the field consistent with this regulatory criterion.

Similarly, at the initial filing of the petition, the petitioner submitted two certificates from the [redacted] reflecting that the judges chose the works of [redacted] “for typographic excellence and for the showing in the [redacted].” In response to the director’s RFE, the petitioner submitted screenshots from [redacted] reflecting the 2012 winners. Specifically, the screenshots indicate that in the “Corporate Identity” category, [redacted] was recognized as the studio/agency and [redacted] was recognized as the client. The petitioner is not acknowledged as receiving an award from [redacted]. Moreover, the petitioner submitted an October 3, 2013 letter from [redacted] Executive Director for [redacted] who stated that “the [redacted] honored [redacted] with the [redacted] for their design of the identity system for [redacted] and that she wanted to clarify the petitioner’s involvement in the project as the lead designer. The

certificates and screenshots, however, do not indicate that the petitioner was specifically granted a [REDACTED]. Again, an award for which the petitioner is not a named recipient is not tantamount to his receipt of an award. Furthermore, the petitioner submitted additional screenshots from [REDACTED] website regarding its history; however they do not reflect that the awards from [REDACTED] annual competition are nationally or internationally recognized. The petitioner did not submit any independent, objective evidence demonstrating that the [REDACTED] are nationally or internationally recognized pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In addition, at the initial filing of the petition, the petitioner submitted a certificate for excellence from [REDACTED] for the [REDACTED] website in the [REDACTED] in 2011. In response to the director's RFE, the petitioner submitted screenshots from [REDACTED] regarding background information of the organization and competition. Although the certificate identifies the awarding design (the [REDACTED] website), it does not indicate to whom it was presented such as [REDACTED] or the petitioner. As such, the petitioner did not establish that he received an award from the [REDACTED]. Moreover, the documentary evidence does not demonstrate that awards garnered from the [REDACTED] are nationally or internationally recognized for excellence in the field as required by the plain language of this regulatory criterion.

Further, at the initial filing of the petition, the petitioner submitted a certificate from the [REDACTED] reflecting that [REDACTED] was a [REDACTED]. In response to the director's RFE, the petitioner submitted another certificate from the [REDACTED] reflecting that [REDACTED] was a [REDACTED]. In addition, the petitioner submitted a March 16, 2009 letter from [REDACTED] congratulating them on being a 2009 finalist. Further, the petitioner submitted letters from [REDACTED] the founding members of [REDACTED] who stated that the petitioner "played a significant role" in projects that were submitted for the 2009 and 2011 competitions. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the petitioner receive "prizes or awards." In this case, the petitioner submitted documentation reflecting that [REDACTED] was a finalist for the [REDACTED]. The petitioner did not establish that being a finalist equates to receiving "prizes or awards." Further, although the petitioner performed in a role for [REDACTED] the petitioner did not receive a [REDACTED] rather [REDACTED] was acknowledged as being a finalist.

Moreover, at the initial filing of the petition, the petitioner submitted uncertified translations for three certificates purportedly from the [REDACTED] Awards. The petitioner also submitted a single certified translation. Specifically, the certification states that "the attached is an accurate translation for the document submitted." The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

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

It is unclear which document, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner did not comply with the regulation at 8 C.F.R. §103.2(b)(3), the evidence will not be given any probative weight. Moreover, one translation claims a [REDACTED] certificate at the [REDACTED]. The second translation, however, claims a merit certificate at the [REDACTED] in 2004. While a third translation claims a merit certificate at the [REDACTED] in 2005. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). While the petitioner is purportedly named as one of several individuals on the certificates, because of the failure to provide a certified translation and inconsistencies discussed above, the petitioner has not established that he received any of the certificates. Regardless, the petitioner did not submit any documentary evidence establishing that the [REDACTED] are nationally or internationally recognized for excellence in the field.

Finally, the petitioner submitted a certificate from the [REDACTED] that listed a few individuals such as the creative director, art director, and copywriter; however, the petitioner is not listed on the certificate. The petitioner did not demonstrate that he received the award, and the petitioner did not submit any documentary evidence establishing that the [REDACTED] are nationally or internationally recognized for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner demonstrate his receipt of nationally or internationally recognized prizes or awards for excellence in his field. In this case, the petitioner did not demonstrate that he has received any prizes or awards, and the prizes or awards are nationally or internationally recognized for excellence in the field.

Accordingly, the petitioner did not establish that he meets this 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 director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

A review of the record of proceeding reflects that the petitioner did not claim eligibility for this criterion at the initial filing of the petition. In response to the director’s RFE, the petitioner based his eligibility on the following:

1. A snippet entitled, [REDACTED] by an unidentified author, [REDACTED]
2. A book entitled, [REDACTED]
3. An uncertified translation of an article entitled, [REDACTED]
4. An uncertified translation of an excerpt from [REDACTED] and
5. An uncertified translation of an excerpt from [REDACTED]

Regarding item 1, the petitioner did not include the author of the material as required pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the snippet is not published material about the petitioner; rather the snippet is about the cover of the magazine in which the petitioner was quoted. Further, the petitioner submitted screenshots from *Wikipedia* regarding [REDACTED]. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. See

Laamilem Badasa v. Michael Mukasey, 540 F.3d 909 (8th Cir. 2008).³ The petitioner did not submit any other documentary evidence establishing that [REDACTED] is a professional or major trade publication or other major medium.

Regarding item 2, the petitioner is credited with providing the Chinese language translations and designing the book's cover. The book, however, is not about the petitioner relating to his work; there is no discussion concerning the petitioner. Submitting samples of the petitioner's work does not meet the plain language of this regulatory criterion that requires "[p]ublished material about the alien." Furthermore, the petitioner did not submit any documentary evidence demonstrating that the book is a professional or major trade publication of other major medium.

Regarding item 3, the petitioner did not submit a certified translation as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Nonetheless, although item 3 reflects an interview with the petitioner, the petitioner did not submit any documentary evidence establishing that [REDACTED] is a major medium. In today's world, many newspapers and publications, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. The petitioner did not establish that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding items 4 and 5, the petitioner did not submit full and certified translations as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), and the petitioner did not include the authors of the material as required pursuant to the regulation at 204.5(h)(3)(iii). Further, the excerpts are about the book, [REDACTED] rather than about the petitioner relating to his work. The excerpts do not mention the petitioner. Moreover, the petitioner did not submit any documentary evidence demonstrating that [REDACTED] are professional or major trade publications or other major media.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In this case, the petitioner's documentary evidence does not reflect published material about him relating to his work in professional or major trade publications or other major media.

³ See also the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 21, 2014, and a copy incorporated into the record of proceeding is subject to the following general disclaimer:

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.

Accordingly, the petitioner did not establish that he meets 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.

The director determined that the petitioner did not establish eligibility for this criterion. In the petitioner's brief submitted on appeal, he did not contest the findings of the director for this criterion or offer additional arguments. Therefore, this issue is abandoned. *See 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) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

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

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

A review of the record of proceeding reflects that the petitioner did not claim eligibility for this criterion at the initial filing of the petition. In response to the director's RFE, as well as in his brief on appeal, the petitioner claimed eligibility for this criterion based on his contribution to the book entitled [REDACTED]. On appeal, the petitioner claims that "he was the co-author and translator" of the book. According to the uncertified translation of the inside cover of the book, the petitioner is credited as the translator; however the authors are [REDACTED]. In fact, the book was originally published in [REDACTED] 15 years prior to the petitioner's birth, and the petitioner is listed as a reissue designer in [REDACTED]. There is no evidence supporting the petitioner's assertion that he authored the book. 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)).

According to the uncertified translation of the inside cover of the book, "[m]ore than half of the selected entries in this book now has [been] incorporated into textbooks." Furthermore, according to the uncertified excerpt translations from [REDACTED] "more than 90 pieces of designs presenting in the book have become the 'classic' and seen in most of text book of design education" and "[t]he idea[s] and thoughts introduced in the book keep inspiring every designers after more than

4 decades.” Although the uncertified translations appear to reflect the impact on the field, the book cannot be attributed to the petitioner’s “original contributions” but rather to those of [REDACTED]

Moreover, on appeal, the petitioner claims that he “wrote an original forward to the Chinese language edition, which re-framed and introduced the work for a new audience and culture, drawing from his specialized role as a bilingual designer with unique insights into both American and Chinese graphic design.” A review of the book does not reflect an original forward by the petitioner. In fact, the book contains an introduction by the original authors from [REDACTED] with a Chinese language translation. The petitioner has not met its burden of proof as its assertions are not supported by documentation in the record of proceeding. *See Matter of Soffici*, 22 I&N Dec. at 165.

The back of the book, however, contains an interview in the Chinese language reflecting the following:

This interview is prepared and executed by [the petitioner].

The original interview is in correspondence format. There are extra materials from the translator’s weekly meetings with [REDACTED] from April to June 2008. The materials have been collected and edited by the translator and only appeared in Chinese. Published upon agreement with [REDACTED]

The petitioner did not submit any documentary evidence demonstrating how the petitioner’s interview with [REDACTED] has somehow altered the impact of the book on the field from the original publication or how it can otherwise be considered an original contribution of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Further, as indicated by the use of the plural in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must show that he has made more than one original contribution of major significance in the field. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that [REDACTED] constituted the petitioner’s original contribution of major significance in the field, which he has not, the submitted evidence does not show that the petitioner

has made more than one original contribution of major significance in the field as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Without additional, specific evidence showing that the petitioner’s work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that he meets the plain language of this regulatory criterion.

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

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

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director found that “the evidence does not indicate that the work that was displayed was the [petitioner’s] work product.” The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” A review of the record of proceeding reflects that although the majority of the petitioner’s documentary evidence relates to work performed by [REDACTED] the petitioner did submit supporting documentation, such as [REDACTED] October 1, 2013 letter, indicating that the petitioner’s work was exhibited at the [REDACTED] and the [REDACTED] reflecting that the petitioner designed and created artwork that was displayed at artistic exhibitions or showcases. As the petitioner demonstrated that his work has been displayed at artistic exhibitions, we withdraw the director’s decision for this criterion.

Accordingly, the petitioner established that he meets this criterion.

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

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

The petitioner claims eligibility for this criterion based on his role as an associate graphic designer with [REDACTED]. The petitioner submitted an organization chart reflecting that his position is below the three founding principals but above the studio manager, project manager, senior designer,

and designers. The petitioner also submitted brief job descriptions for each of the positions. Specifically, the associate is described as:

Senior-most designer at the studio, oversees art direction; supervises recruiting and creative staffing; manages, supervises, and leads project team and junior staff, including Project Manager, Senior Designers, Designers, and interns.

In addition, the petitioner submitted an April 2, 2013 letter from [REDACTED] Principal for [REDACTED] who stated:

[The petitioner] helps us to set the creative course for the studio, directing projects, managing client relationships, mentoring junior staff with guidance and feedback, and helping to assess and recruit young talent for the studio. His title, the highest we offer below Principal, is a representation of our faith and trust in his abilities.

Moreover, the petitioner submitted recommendation letters from individuals who have collaborated on jobs with [REDACTED] and the petitioner. For instance, [REDACTED] stated that “[w]e have collaborated with [REDACTED] on a number of assignments over the years, and I have developed a mentor relationship with many of their designers, and especially with [the petitioner]” Further, [REDACTED] Architecture [REDACTED] stated that “[w]ith [the petitioner] acting as lead designer for the team, [REDACTED] worked with us to design exhibition graphics, print collateral, and publicity materials”

Based on the documentation discussed above, the petitioner demonstrated that he performed in a leading or critical role for [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the petitioner’s roles be “for organizations or establishments that have a distinguished reputation.” As indicated under the awards criterion, the petitioner submitted documentary evidence reflecting that [REDACTED] received the [REDACTED] and was a two-time [REDACTED] finalist. The petitioner, however, did not submit any documentary evidence that sets [REDACTED] apart from other graphic design companies, so as to establish that [REDACTED] has a distinguished reputation. There is no evidence that differentiates [REDACTED] from others in the field.

The director also indicated that the petitioner provided documentation regarding his employment with the [REDACTED]. The record of proceeding reflects that the petitioner submitted an “Artist Performance Agreement” between the [REDACTED] and [REDACTED] and a screenshot from [REDACTED] regarding the mission and governance of the institution. The documentation, however, does not indicate what roles, if any, that the petitioner was to perform for the [REDACTED]. The screenshot reflects the mission and governance of the institution but does not indicate any roles the petitioner performed for it. In addition, the petitioner submitted a September 18, 2013 joint letter from [REDACTED] who stated that the petitioner has “graciously hosted group visits” from several institutions including one from the [REDACTED] on April 17, 2013. Hosting a group visit for students from the [REDACTED] is not indicative of a leading or critical role consistent with the plain language of the regulation at 8 C.F.R.

§ 204.5(h)(3)(viii). Moreover, the petitioner did not submit any documentation establishing that the [REDACTED] has a distinguished reputation.

Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not demonstrated that he meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that he meets this 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 director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.”

The petitioner indicated in Part 6 of Form I-140, Immigrant Petition for Alien Worker, that his job title was an “Associate Graphic Designer. At the initial filing of the petition, the petitioner submitted a June 17, 2013 job letter from [REDACTED] indicating that the petitioner’s yearly salary was \$80,000 as an “associate.” Furthermore, the petitioner submitted a screenshot from www.bls.gov regarding 2012 Occupational Employment and Wages reflecting that the 90th percentile of graphic designers earned an annual salary of \$77,490. Moreover, the petitioner submitted a screenshot from www.flcdatcenter.com regarding Online Wage Library reflecting Level 4 Wage of graphic designers earned an annual salary of \$76,544. In addition, the petitioner submitted a screenshot from www.careeronestop.org regarding Wage Information reflecting 90% of graphic designers earned less and 10% earn more than \$77,400.

In response to the director’s RFE, the petitioner submitted income tax documentation reflecting that he earned \$66,853 for 2012 and \$67,194 for 2011 while employed at [REDACTED]. In addition, the petitioner submitted paystubs reflecting that he earned \$86.46 per hour (approximately \$80,000 per year) in 2013 while employed by [REDACTED]. Further, the petitioner submitted an October 10, 2013 job letter from [REDACTED] indicating that the petitioner’s yearly salary is \$80,000 as an “associate.” Moreover, the petitioner submitted documentation from the [REDACTED] highlighting that a designer earns between \$38,900 and \$53,500, and a senior designer earns between \$52,000 and \$75,000. Finally, the petitioner submitted a document from an unidentified source entitled, [REDACTED] reflecting that the 75th percentile of graphic designers earns \$57,000.

The plain language of the regulation requires the petitioner to demonstrate that his salary is high “in relation to others in the field.” In this case, the petitioner is employed as an “associate.” According to the [REDACTED] organizational chart and job duties mentioned under the leading or critical role criterion, the associate is above the studio managers, senior designers, and designers. The petitioner, however, submitted documentation regarding the salaries of graphic designers. The

petitioner did not submit any documentary evidence comparing his salary to other associates in his firm or other positions with comparable job responsibilities. Furthermore, according to the [REDACTED] strategy directors or design strategists earn between \$79,400 and \$150,000, creative/design directors earn between \$76,000 and \$140,000, and design managers earn between \$65,000 and \$109,000. When compared to these occupations, in which the petitioner's job duties are more closely associated, the petitioner's salary is at the low end of the spectrum.

Moreover, even when compared to the salaries of graphic designers, the petitioner does not command a high salary consistent with the plain language of the regulation at 8 C.F.R. § 204.5(3)(ix). The salary screenshots mentioned above only provided average and median salary data for graphic designers and did not identify the high end salaries for those performing work with similar responsibilities as the petitioner. The petitioner must submit evidence showing that he has earned a high salary, not a salary that is above the amount paid to the majority of fully competent workers.

The record contains no objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *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). In the present case, the evidence the petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

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

B. Summary

The petitioner has failed to satisfy the antecedent 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.

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. 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.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent 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.

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 We conduct 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, 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).