



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

SEP 08 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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality 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.

The petitioner’s priority date established by the petition filing date is August 13, 2013. On October 19, 2013, the director issued the petitioner a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on February 26, 2014. On appeal, the petitioner submits a brief with no new documentary evidence. For the reasons discussed below, we uphold the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. LAW

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

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

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

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

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

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established 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 the decision to deny the petition, the court took issue with the 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 the 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 did not 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 not satisfied the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO 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. Standard of Proof

On appeal, the petitioner asserts that while the director did not specify the standard of proof he used, he appears to have applied a higher standard of proof than is mandated, which is the preponderance of the evidence standard.

The most recent precedent decision related to the preponderance of the evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), which states:

[T]he “preponderance of the evidence” standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation’s eligibility as an “American firm or corporation” under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375, n.7. The final determination of whether the evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988) (finding that the appropriate entity to determine eligibility is USCIS in a scenario whereby an advisory opinion or statement is not consistent with other information that is part of the record). Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r 1989)).

Id. As the director concluded that the petitioner had not submitted evidence satisfying the regulatory requirements, the director did not violate the appropriate standard of proof. The standard of proof issue is separate and distinct from the petitioner’s assertion that the director may have ignored the significance of some evidence, which we will address below. We affirm the director’s ultimate conclusion that the petitioner did not submit probative evidence to establish her eligibility.

B. Evidentiary Criteria²

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

Within the initial filing statement, the petitioner claimed she has received lesser nationally or internationally recognized prizes or awards, but did not address this criterion in response to the

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

director's RFE or on appeal. As the petitioner has not raised this claim since the initial filing, it 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-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011). Accordingly, the petitioner has not submitted qualifying evidence under 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.

Within the initial filing statement, the petitioner claimed membership in associations in her field, which require outstanding achievements of their members, but did not address this criterion in response to the director's RFE or on appeal. As the petitioner has not raised this claim since the initial filing, it is abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not submitted qualifying evidence under 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 the petitioner met the requirements of this criterion. The petitioner's evidence that he has reviewed manuscripts submitted for publication is sufficient to establish that she meets this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. Contributions of major significance connotes that the petitioner's work has significantly impacted the field. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner identifies the following forms of evidence under this criterion:

- Her authorship of scholarly articles, the impact factor or rankings of the publications in which her articles are published, and the number of citations her articles have garnered;
- Her presentations at scientific conferences; and
- Expert opinion letters.

The director determined that the petitioner did not meet the requirements of this criterion.

The petitioner asserts that her peer reviewing is a reflection of her contributions to the field. However, she did not explain how her reviewing the work of her peers constitutes a contribution of major significance in her field, other than to indicate that highly regarded journals would not select the petitioner to review articles unless she had made an impact in the field and her work was important. This assertion is not persuasive evidence that the petitioner has made a significant impact in her field. We have already considered this evidence under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Meeting that criterion does not create a presumption that the petitioner also meets the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). It is the petitioner's burden to demonstrate how that evidence is relevant to this criterion. The petitioner has not established that every research scientist an editor selects to review manuscripts submitted for publication to a peer-reviewed journal must have made significant contributions to their field as anticipated by the regulation. Rather, Dr. [REDACTED] Guest Editor for the special issues of [REDACTED] asserts that peer reviewer selection "is based on their expertise in the field" but does not suggest they must demonstrate any impact in the field. In addition, the request to review a manuscript for the [REDACTED] requests that if the petitioner is unable to perform the review, that she recommend a colleague. The request does not advise that the colleague must have demonstrable contributions of major significance to be an acceptable reviewer.

The petitioner implies that the director did not review all the evidence on record because the director did not discuss all of the evidence that the petitioner believes to be important. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

The petitioner indicates that the major significance of her contributions is apparent from citations to two of her published works in a greater number than the publication's impact factor. The petitioner points to evidence submitted with the initial petition, and in response to the director's RFE. Much of the evidence the petitioner submitted in response to the RFE postdates the petition filing date. For example, all the evidence relating to impact of the petitioner's articles at Exhibit 4 within the RFE response, postdates the petition filing date. Furthermore, the petitioner provides new citation statistics that do not reflect which citations occurred prior to the petition filing date, and which occurred after she filed the petition. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Regarding the evidence submitted with the initial petition, the petitioner did not submit evidence demonstrating that because one of her articles garners a greater number of citations than the publication's impact factor, or the average number of citations an article generally receives in this same publication, that this is commensurate with contributions of major significance

within her field. Further, the initial evidence reflects that the petitioner's article receiving the greatest number of citations appeared in the March 2007 edition of [REDACTED]. However, the petitioner did not provide any impact factor statistics relating to this publication.

While the number of total citations to the petitioner's work is a factor, it is not the only factor that we consider in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in her work. However, it is not an automatic indicator that the petitioner's work has been of major significance in the field. In this case, according to the website printouts from Google Scholar submitted with the initial petition, one of the petitioner's articles garnered a moderate number of citations while two other articles garnered minimal citations. The petitioner has not submitted persuasive evidence that such citations demonstrate that the petitioner's work has been of major significance in the field.

Furthermore, the petitioner did not submit any documentary evidence demonstrating that her articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact in the field. Merely submitting documentation reflecting that one of the petitioner's articles has been moderately cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of a major significance in the field. The petitioner has not established that her moderate citations history is reflective of the major significance of her work in the field. For example, the petitioner did not provide the pages of the citing articles that indicate the proposition for which the authors cited her work. Thus, she has not established whether they cited her as foundational to their own research or as background material of related research in the area.

The petitioner's evidence includes documentation that she has presented her findings at various scientific conferences along with numerous other participants. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. Professional associations, businesses, educational institutions, and government agencies sponsor these conferences. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field after the close of the conference.

Again, while the presentation of the petitioner's findings demonstrates that the petitioner's work was shared with others and may be acknowledged as original contributions based on the selection of them to be presented, the petitioner has not submitted persuasive evidence that her presentations at two venues are sufficient evidence establishing that the petitioner's work is of major significance to the field as a whole and not limited to the two engagements in which they were presented. The petitioner did not establish, for example, that the presentations were of major significance so as to establish their impact or influence beyond the audience at the conferences.

With respect to the director's analysis of the reference letters, the petitioner asserts that the director did not understand the difference between basic science and the petitioner's practice within applied science. The petitioner claims that as her field deals solely with research, that the impact she can have "is to open up new areas of research for other researchers. This could be in the area of drug discovery, or it could be in the area of using existing drugs differently, or in the area of researching the theories [the petitioner] proposes in different areas." The petitioner's assertion that the discussions of her potential impact on drug discovery demonstrate her impact on the field by showing that her work has stimulated others to use her work, is not persuasive. She must be able to demonstrate that her findings have already moved the field forward at a level consistent with a contribution of major significance.

According to the evidence from Google Scholar submitted with the petition, the petitioner's most cited work was published in 2007. However, the record lacks evidence that the potential research avenues that derive from this article or other published works have resulted in advancements commensurate with a contribution of major significance. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that 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). It can be expected that, to rise to the level of contributions of major significance, other experts would have already reproduced and confirmed the petitioner's results and applied those results in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

On appeal, the petitioner identifies five expert letters in support of her eligibility under this criterion. The first author, Dr. [REDACTED] an Associate Professor at the [REDACTED] [REDACTED] in Brazil, indicates that the petitioner has made an important contribution to the fields' understanding of the role the host factor performs relating to the human immunodeficiency virus (HIV). He stresses the importance of understanding the structure of the disease in order to develop better antiviral solutions; however, he does not specify within his letter that the petitioner's new findings have resulted in any breakthrough developments or improvements that have already come to fruition. Instead, Dr. [REDACTED] predicts that her work "will lead to development of more effective antiviral agents" in the future.

Dr. [REDACTED] Professor of Biophysics at [REDACTED] discusses the petitioner's results with HIV resistant macrophages and iron chelators concluding: "[The petitioner's] work has advanced the development of new therapeutic approaches to HIV1 treatment." However, neither he nor the petitioner provides insight into the extent of the impact that her results have already had within the realm of HIV treatment. Dr. [REDACTED] merely concludes that the petitioner's work "would open a new direction for HIV therapeutics."

Dr. [REDACTED] Professor of Microbiology at [REDACTED] indicates that the petitioner's discovery relating to "regulators of HIV-1 replication in patients with sickle cell disease and in iron depleted or heme treated cultured and primary [cells] infected with HIV-1 are new targets for HIV1 treatment. As a researcher in HIV1 field [sic] I state with confidence that these targets are key to

fight Drug resistant HIV1, a major hurdle in treatment of AIDS [acquired immunodeficiency syndrome].” Dr. [REDACTED] states that these findings are key to fight one form of HIV; however, he did not indicate that the petitioner’s findings have already impacted the field or that this discovery has already resulted in significant advancements in HIV or AIDS treatment research.

In fact, when Dr. [REDACTED] discusses the petitioner’s research with stem cells, he states: “The induced pluripotent stem cells from CDK2 knockdown cells lines resistant to HIV infection developed by [the petitioner] will help in development of patient specific stem cell not only for HIV but for other infectious disease also. Both these findings holds [sic] a great potential for HIV research and disease treatment.” Future prospective benefits that the petitioner’s findings may have in the field are not elements that will qualify her under this criterion. The regulation requires that the petitioner has already made major and significant impacts within her field. Furthermore, it can be expected that, to rise to the level of contributions of major significance, other experts would have already reproduced and confirmed the petitioner’s results and applied those results in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

[REDACTED], CEO and President of [REDACTED] states within his January 2, 2014 letter that the petitioner’s “work on HIV transcription and novel therapeutics will pave the way to [a] new class of drugs to stop the spread of HIV.” Mr. [REDACTED] does not, however, describe the manner in which the petitioner has already made a significant impact within her field. He does not suggest that [REDACTED] is pursuing such therapeutics based on the petitioner’s work. He also discusses the petitioner’s patient specific stem cell therapy and her work with sickle cell research and its potential as an HIV treatment. Again, future and prospective industry breakthroughs are not sufficient to satisfy the plain language requirements of this criterion; the petitioner must have already realized these breakthroughs.

Dr. [REDACTED] a professor at the [REDACTED] indicates that the petitioner’s findings serve as a new groundbreaking tool to study HIV infection, and that her sickle cell research assists the field in understanding the molecular pathways for cell dysfunction in HIV-1, but only indicates that this work “has a great potential for preclinical studies of these patients.” Dr. [REDACTED] also does not provide a description of how the petitioner’s research has impacted the field at a level commensurate with a contribution of major significance.

While a review of the remaining expert letters on record reveals that the petitioner has added to the pool of knowledge within her field and that she is held as a competent and capable researcher, none of the experts describe how the petitioner has impacted her field through her research findings such that her contributions are considered to be of major significance in the field.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is “self-serving.” See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: “We not only encourage, but require the introduction of corroborative

testimonial and documentary evidence, where available.” *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

Vague, solicited letters from local 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 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner’s skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795.

However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact” but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. *See also Visinscaia*, 2013 WL 6571822, at *8 (concluding that USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

While the record includes numerous attestations of the potential impact of the petitioner’s work, none of the petitioner’s references provide examples of how the petitioner’s work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that she meets this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director determined the petitioner met the requirements of this criterion. The petitioner has authored scholarly articles in the required publication types to establish that she meets this criterion.

C. Summary

The petitioner has not satisfied 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 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[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.³ Rather, the proper conclusion is that the petitioner has not satisfied 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.

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.

³ The AAO maintains 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, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).