



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **SEP 08 2014**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A) as an agricultural and natural resource management specialist. 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 October 8, 2013. On October 17, 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 November 26, 2013. On appeal, the petitioner submits a brief. For the reasons discussed below, we uphold the director’s ultimate determination that the petitioner has not established his 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that 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.*

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<sup>1</sup> 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. Evidentiary Criteria<sup>2</sup>

*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.*

While the director concluded that the petitioner meets this criterion, the record does not support this finding. We conduct appellate review on a *de novo* basis. Our *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner initially claimed eligibility under this criterion based on:

- His work with a tripartite evaluation he organized in [REDACTED] in November 1996;
- His implementation and management of the [REDACTED] funded [REDACTED] project;
- His idea of a Tripartite evaluation, as a panel member and main presenter at the [REDACTED];
- His assistance with the [REDACTED]; and
- Through his work on a steering committee in which he was a member of the panel to assess the work on biological nitrogen fixation on the [REDACTED] encompassing several countries.

Regarding each of these claims, the petitioner provides his personal statement that describes how he performed duties that would satisfy this criterion's requirements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As evidence of his work on the tripartite evaluation in November 1996, the petitioner provides photographs with captions from an unidentified source, and a foreign language article entitled “A Conclusive Test at [REDACTED]” that lacks a certified translation into English. Regarding the photographs

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

of the petitioner at the 1996 event, such evidence does not demonstrate that the petitioner actually served as a judge of the work of others in the same or an allied field. In reference to the foreign language article, the translation of the foreign publication does not comply with the terms of 8 C.F.R. § 103.2(b)(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.

The petitioner certified that he completed the translations to the best of his knowledge, but does not certify them as complete and does not certify his competence to translate. The translation also does not contain the publication's name; however, the name on the foreign language document indicates the publication's name is [REDACTED]. The translation also does not reflect the article's publication date, although the foreign language document indicates it was in 1996. Consequently, this foreign language document has no evidentiary or probative value. Regardless, the article does not establish that the petitioner's involvement in this project involved participating as a judge of the work of others in his field or an allied field. The article explains that [REDACTED] funded the [REDACTED] agricultural development project that [REDACTED] is implementing in [REDACTED]. While it does state that the petitioner's team "proceeded to the thoroughly [sic] evaluation of the project," it does not provide any details on this evaluation such that it establishes that it involved participating as a judge of the work of others in the petitioner's field or an allied field.

Regarding the petitioner's claim relating to [REDACTED] project, the petitioner provides letters from [REDACTED] Mr. [REDACTED] Coordinator, indicates that the petitioner was the [REDACTED] assistant coordinator, and he praises the petitioner's managerial skills, but he does not discuss the petitioner's duties of judging the work of others in his field or in a related field. The letter from Mr. [REDACTED] President of [REDACTED] is addressed to the petitioner and congratulates him on his successful evaluation of the [REDACTED] project. Mr. [REDACTED] acknowledges that the petitioner created the tripartite evaluation idea; however, Mr. [REDACTED] does not describe the idea or otherwise explain the manner in which the petitioner performed the duties of a judge of the work of others in the same or an allied field of endeavor as required by the regulation.

Regarding the petitioner's assistance with the [REDACTED] he provides an email from [REDACTED] to the petitioner. Mr. [REDACTED]'s email does not indicate that Mr. [REDACTED] holds a position of authority within the [REDACTED] nor does it establish that the petitioner performed any judging duties in line with this criterion's requirements. Specifically, Mr. [REDACTED] expresses his appreciation to the petitioner for "delivering such a positive and dynamic vision for the development of the [REDACTED] management plan." Mr. [REDACTED] asserts that the proposal represents a "collective determination from the [REDACTED] and its partners." The petitioner provided the [REDACTED] proposed management plan which "lays out the Scope of Work of the proposed planning process to develop an Interim Management Plan (IMP) for the [REDACTED]. The plan does not name the petitioner or his role in developing this plan or

otherwise suggest the petitioner's participation in developing this plan involved participating as a judge of the work of others in his field or an allied field.

Regarding the petitioner's work on biological nitrogen fixation on the [REDACTED] the petitioner provides a foreign language article titled, [REDACTED]

[REDACTED] The petitioner's translation into English does not comply with 8 C.F.R. § 103.2(b)(3) for the same reasons discussed above and also lacks the publication name and date (*Le Soleil* and 1991 according to the foreign language document). Although the article reflects the petitioner's involvement with this project by raising questions that impact how researchers need to invest in nitrogen fixation, it does not establish that the petitioner performed as a judge of the work of others within his field or an allied field within this project.

A review of the remaining evidence on record, which includes news articles and evidence relating to other evidentiary criteria, does not reveal that the petitioner actually participated as a judge of others in his or in a related field. For example, the undated letter from [REDACTED] Senior Agricultural Advisor for [REDACTED] and former [REDACTED] states that the petitioner "came up with a creative, yet sensitive way to conduct the project's mid-term assessment by designing what was referred to as a 'Tripartite Evaluation.'" Mr. [REDACTED] does not, however, state that the petitioner performed these evaluations. Rather, Mr. [REDACTED] explains that the evaluation method involved multiple parties, including the host government, the donor and the project technical staff.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned his claims under this criterion. *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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under 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 submitted sufficient evidence, including two articles published in United Nations publications, to 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 discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned his claims under this criterion. *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 that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. The petitioner also has the responsibility to demonstrate that he actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner did not demonstrate that any of his roles for various organizations or establishments met the requirements of this criterion. On appeal, the petitioner only identifies one qualifying organization under this criterion, [REDACTED] and provides several letters that he also submitted to the director in the previous proceeding. As the petitioner did not contest the director's determination relating to any of the other previously claimed organizations or establishments, he has abandoned the claims relating to these entities within this proceeding. *Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (where the alien abandoned his eligibility claims by failing to make a substantive argument regarding the issues in his appellate brief).

Based on the evidence on record, the petitioner demonstrates that he has performed in a leading or critical role for [REDACTED]. The letters on record that discuss [REDACTED] relate primarily to the work that he performed for the organization. However, the petitioner does not provide any independent, objective evidence or a description of how [REDACTED] has achieved a distinguished reputation. The appellate brief describes the

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<sup>3</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on August 26, 2014, a copy of which is incorporated into the record of proceeding.

organization's history and future plans. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, the organization's half century history of providing aid to those in need demonstrates its duration and success. This history, however, falls far short of demonstrating that the organization enjoys a distinguished reputation. [REDACTED] Vice President for Human Resources at [REDACTED] asserts that the organization "distinguishes itself through its unique approach to partnership and capacity building, a commitment to learning and continuous improvement, and a reputation as a responsible steward of funder resources." [REDACTED] Country Director for [REDACTED] confirms that [REDACTED] worked on a [REDACTED] funded project. Dr. [REDACTED] Deputy Chief, U.S. Geological Survey (USGS) Science and Decisions Center, confirms that [REDACTED] has partnered with USGS on a project. Although [REDACTED] is an organization that addresses complex problems related to economic development and other societal needs, there is no presumption that every non-governmental organization (NGO) working on government-funded projects with beneficial goals enjoys a distinguished reputation. The petitioner did not submit, for example, documentary evidence demonstrating [REDACTED] distinguished reputation in the field of resource management, such as, but not limited to, trade media coverage of the company.

Even if the petitioner had demonstrated that he performed in a leading or critical role for [REDACTED] this role is only for one organization or establishment. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner to have performed in a leading or critical role for "organizations or establishments" in the plural, which 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. Thus, we can infer that the plural in the remaining regulatory criteria has meaning.

Accordingly, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

#### B. Comparable Evidence

The appellate brief requests that we consider the petitioner's "entire submission" as comparable evidence because the petitioner, unlike an artist or scientist, cannot "point to a novel product or performance." The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). Notably, several of the criteria "are written in terms broadly applicable even within the business community." 56 Fed. Reg. 60897, 60898 (Nov. 29, 1991). Where an alien is simply unable to meet or submit sufficient documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As the petitioner has not attempted to demonstrate that the

regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation or explained what evidence is comparable to the listed criteria and how it is comparable to those criteria, the petitioner may not rely on comparable evidence to qualify for this immigrant classification.

### 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.<sup>4</sup> 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.

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<sup>4</sup> 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).