



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **SEP 22 2014** Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, 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 a previous petition approval under section 203(b)(2) of the Act is February 9, 2011. The petitioner filed the present petition on October 10, 2012. On April 4, 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 July 17, 2013. On appeal, the petitioner submits a brief with no new documentary evidence. Within the appeal, the petitioner asserts the director misunderstood the submitted evidence. 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. One-time Achievement

With regard to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), a Federal Court recently stated:

The . . . debate over what constitutes a “major” international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those awards that are “major” and those that are not. The applicable law in this case draws no clearer line, other than to establish that some awards are “major, international recognized award[s]” and others are “lesser nationally or internationally recognized prizes or awards”. 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to differentiate between “major” and lesser awards. In legislative history, Congress named the Nobel Prize as its sole example of a major, internationally recognized award that would by itself demonstrate “extraordinary ability.” *Kazarian*, 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner’s] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define “major” in this context. It entrusted that decision to the administrative process.

*Rijal v. U.S. Citizenship & Immigration Services*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *see also Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at \*5 (D.D.C. Dec. 16, 2013).

The *Rijal* court also determined that USCIS did not act arbitrarily and capriciously if it:

[C]onsidered the relevant factors and articulated a rational connection between the facts it found and the choice it made. USCIS explicitly considered the awards and all of the evidence [the petitioner] submitted to support his claim that they were major, international awards. USCIS articulated a rational connection between those facts and its conclusion that his awards were not “major.” (evidentiary citation omitted). Another adjudicator might have come to a different conclusion, but that is irrelevant. Unless the court can conclude that no rational adjudicator would have come to that conclusion, the USCIS did not act arbitrarily and capriciously.

772 F. Supp. 2d at 1345-46 *aff’d*, 683 F.3d 1030; *see also Visinscaia*, 2013 WL 6571822, at \*5. Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even lesser

internationally recognized awards could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner claims his Fellowship at the [REDACTED] as his major, internationally recognized award. The petitioner provided expert letters, a list of his clinical research projects, and his invitation to an observational study. The director determined that fellowships are a form of financial support for future training or research, and that the petitioner's fellowship is not a nationally or internationally recognized award. On appeal, the petitioner describes the difficulty in being accepted in this fellowship, and asserts that only the top students are admitted.

The petitioner's field of expertise is cardiology. The director concluded that those in this fellowship program are still in training and are not yet in the field. Even if the petitioner were to demonstrate that this particular fellowship program was considered to be in his field, and not training preparing him to be in his field, he did not provide evidence that that his acceptance in the [REDACTED] Fellowship is internationally recognized as one of the top awards in his field. For example, the petitioner did not provide evidence that his acceptance in this fellowship was reported in major international or even national media.

Although letters from those in the petitioner's field claim that it is an honor to be in a fellowship at the [REDACTED] letters alone without corroborating evidence are insufficient to demonstrate that this fellowship constitutes a major, internationally recognized award. As a result, this fellowship is not sufficient to meet the requirements as a one-time achievement.

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

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

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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.

The petitioner provided invitations to present at medical conferences, awards from [REDACTED] and letters from experts in his field. The director determined that the petitioner did not meet the requirements of this criterion. On appeal, the petitioner asserts that the director ignored the aforementioned invitations, and that these presentations should qualify him under this criterion.

Regarding the petitioner's invitations to present at medical conferences, he submits a letter from [REDACTED] Program Director for the [REDACTED] Fellowship Program. Dr. [REDACTED] indicates within his letter: "Only leading scientists are selected to give these presentations, which are considered highly prestigious given the national aspects of the conferences. Selection of [the petitioner] to participate in these conferences is a reflection of his high accomplishments and the novel contribution of his work to his field." Neither Dr. [REDACTED] nor any other expert on record, asserts that the petitioner received invitations to speak at these conferences a result of receiving a prize or an award. Therefore, the petitioner's presentations at the claimed medical conferences do not constitute prizes or awards as contemplated by the regulation.

Regarding the petitioner's awards from [REDACTED] the petitioner submitted copies of the awards and letters from medical field experts that discuss these and other awards that the authors assert the petitioner has received. The [REDACTED] awards constitute local or institutional recognition rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner did not submit evidence of the national or international recognition of these awards, such as national or widespread coverage of the awards. A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This can occur through specific means; for example, through media coverage.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the preceding awards were recognized beyond the presenting organizations and are therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Additionally, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. *See 1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

Regarding the remaining awards mentioned in the expert letters, the petitioner did not provide primary evidence of any awards outside of [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist, or cannot be obtained, may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In

this case, while the petitioner submitted letters, the petitioner did not submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained.

For the reasons discussed above, the petitioner's fellowship at the [REDACTED] falls substantially short of constituting not only a major internationally recognized award, but also a lesser nationally or internationally recognized prize or award for excellence in the field. Accordingly, the petitioner has not submitted evidence that meets the plain language requirements of 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.*

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that he is a member of more than one association in his field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner's field, who represent the association, render this determination. It is also insufficient for the petitioner to claim that he was admitted to the association because of his outstanding achievements; the petitioner must show that the association requires outstanding achievements of all prospective members. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner submitted evidence relating to this criterion within the initial filing, but did not address this criterion or offer additional evidence in response to the director's RFE. The director's decision indicates that although the petitioner demonstrated he was a member of associations that are in his field, he did not provide evidence that any of the associations require outstanding achievements as a condition of membership. On appeal the petitioner asserts that the director did not understand the evidence relating to his memberships, and that the director could not have evaluated the significance of the initially submitted evidence. The petitioner did not identify what evidence establishes that the associations of which he is a member require outstanding achievements as a condition of membership.

On appeal, the petitioner claims eligibility under this criterion based on his membership in the [REDACTED] and his board certification in three medical disciplines: cardiology, interventional cardiology, and nuclear cardiology. As evidence relating to the petitioner's memberships, he submits certificates and support letters from experts in the field. Dr. [REDACTED] the Head of the Department of [REDACTED] merely recommends the petitioner for membership in the [REDACTED]. Nevertheless, Dr. [REDACTED] asserts that membership selection is based on an individual's scholarly achievements, professional contributions and career values. These criteria are

not outstanding achievements in the petitioner's field. Dr. [REDACTED] Professor of Medicine at the [REDACTED] Minnesota, indicates that the petitioner is a board member on the [REDACTED] and that the exams for admittance to this board are a requirement for continued service on the faculty. The petitioner has not established that the minimum requirements for continued service on the faculty are outstanding achievements. Dr. [REDACTED] Governor of the [REDACTED] in which the petitioner was elected as councilor, asserts that leadership and trustworthiness led to the petitioner's successful election, but does not indicate that the [REDACTED] requires outstanding achievements in the field for all of its members. Nor did the petitioner provide evidence to establish that an election is tantamount to his membership admittance being judged by recognized national or international experts in his field.

As noted within the director's decision, the record lacks evidence of the membership requirements for any of the associations claimed on appeal. We will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors independent of the exclusive nature of its membership. The petitioner asserts stringent membership requirements within the appellate brief; however, 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)). Additionally, a license or certification to practice in a particular profession or occupation is a criterion for a lesser immigrant classification under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C).

The record does not contain the bylaws or other official documentation of the association's membership criteria; thus, the petitioner has not established that the memberships are qualifying. Moreover, even if we accepted the information in the letters, they do not attest to requirements for outstanding achievements. Thus, the petitioner has not established that he meets the requirements of 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.*

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claimed to meet this criterion for the first time in response to the RFE. The petitioner's appellate brief only references his [REDACTED] interview. The director determined that the [REDACTED] interview did not meet the requirements of this criterion, and that the petitioner did not submit evidence demonstrating that the article from [REDACTED] newspaper enjoyed a national or international reach sufficient to constitute a form of major media. The record supports the director's findings with respect to [REDACTED]

The evidence relating to the petitioner's [REDACTED] radio interview does not bear a source; however, the cover letter to the RFE response reflects that the interview occurred on February 11, 2013, which postdates the petitioner's petition filing date of October 10, 2012.<sup>3</sup> 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). Additionally, while the material is about the petitioner and relating to his work in the field, the petitioner did not provide evidence indicating whether the transcript of his interview with [REDACTED] only broadcast on the local [REDACTED] channel or whether it also appeared on the national broadcast. Publications with only a regional reach are not generally considered to be major media and the petitioner has not established this publication is a professional or major trade publication as required by the regulation.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of 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.*

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 director determined that the petitioner did not meet the requirements of this criterion because the petitioner submitted only invitations to serve as a peer-reviewer, with no evidence that he actually served in this role. On appeal, the petitioner references a facsimile from Scholar One Manuscripts that pertains to a completed review. On appeal, the petitioner notes that his name and facsimile number appear at the top of this qualifying evidence, and he asserts that this is sufficient to demonstrate that he was the individual who performed the manuscript review. The entity that

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<sup>3</sup> The radio station's website confirms the interview occurred on February 11, 2013. *See* [http://\[REDACTED\]](http://[REDACTED]) accessed on August 12, 2014, a copy of which is incorporated into the record of proceeding.

drafted the document did not print the petitioner's name on the provided evidence. The only indication on this evidence that bears any relation to the petitioner is at the top of the page where the facsimile machine printed his name in addition to other information. This limited information is not sufficient to demonstrate that the petitioner actually served as a judge of the work of others in the same or an allied field.

The petitioner also asserts that his experience as faculty at various medical schools and his appointment as a Chief Resident should also be considered under this criterion. The petitioner asserts within the appellate brief that he was called upon to instruct students, to grade them on their class work and their clinical training, to evaluate their performance on their in-service exams, and to participate in teaching and evaluating the performance of prospective physicians, graduate physicians and medical students.

The petitioner's position as Chief Resident was with [REDACTED]. The petitioner did not submit evidence that demonstrates that his duties in this position constitute judging the work of others in the field. In his January 3, 2012 letter, Dr. [REDACTED], Assistant Dean and Professor at [REDACTED] indicates that, as Chief Resident, the petitioner assured a level of excellence in judging the work of medical students. Dr. [REDACTED] does not provide the duties in which he asserts the petitioner judged the medical students' work. Incidental evaluation responsibilities inherent to a training position do not establish that the petitioner served in an official capacity, either individually or on a panel, as "a judge" of the work of others.

Regarding the petitioner serving as a professor, where part of one's job duties includes evaluating students does not equate to participation as a judge of the work of others in the field. As stated above, the phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of evaluating students as their professor. Additionally, students in medical school are not in the petitioner's "field of specification for which classification is sought" as required by the regulation. As such, the petitioner has not established that his experience as faculty at various medical schools serves to meet this criterion.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of 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, to include his scholarly articles in [REDACTED] and the [REDACTED] to establish 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.*

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. The petitioner 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>4</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 meet the requirements of this criterion.

Regarding the [REDACTED] the petitioner submits documentation relating to his appointment as voluntary faculty with the rank of Clinical Assistant Professor. Although this documentation demonstrates his appointment to a particular position, it does not document the duties that the petitioner actually performed for the Internal Medicine Department, nor does it reflect the impact that the petitioner had on the department. It is not apparent from the record how the petitioner, serving as a Clinical Assistant Professor, satisfies this criterion's requirements and we will not presume that this position meets the regulatory requirements from the title alone. The record also lacks evidence that would demonstrate this entity's distinguished reputation.

The evidence relating to the petitioner's faculty appointment with [REDACTED] consists of a September 18, 2012 appointment letter signed by [REDACTED] reflecting the petitioner served as the Chief Resident of Internal Medicine Residency Program from July 1, 2005 through June 30, 2006, and expert letters. Although the position of Chief Resident of Internal Medicine Residency Program appears to be a leading role within this program, the petitioner did not provide evidence from the university or from any person who served in authority over him within this program that might provide details about the duties the petitioner actually performed. Within his January 3, 2012 letter, Dr. [REDACTED] indicates that the petitioner served in a leading role as the Chief Resident of Internal Medicine Residency Program. As the residency program is the entity in which the petitioner claims to have served in a leading role, this is the organization or establishment that he must also establish enjoys a distinguished reputation. However, the petitioner did not provide evidence to demonstrate that the Internal Medicine Residency Program enjoys a distinguished reputation,

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<sup>4</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on August 12, 2014, a copy of which is incorporated into the record of proceeding.

independent of the larger institution. In the absence of evidence, we will not presume that a residency program's reputation is imputed from that of the university.

The petitioner also submits two letters of support with the initial petition filing. The first letter from [REDACTED], Professor of Medicine at the [REDACTED] dated July 24, 2012 asserts the petitioner performed in a critical role for the hospital because: "Being an Interventional Cardiology Fellow is a critical position in a teaching hospital and is vital to providing quality cardiovascular care to patients. In addition to clinical and research responsibilities, [an] Interventional Cardiology Fellows [sic] serves as a critical role in providing instruction to cardiology fellows and residents, closely supervising their work in both the clinical environment as well as during procedures, and also reviewing and evaluating their performance." The petitioner has not established how his role in this capacity has been critical to the [REDACTED]. For instance, while Dr. [REDACTED] asserts generally that the petitioner's contributions to the [REDACTED] are critical; he does not explain the manner in which the petitioner's performance has been critical to the hospital as a whole, beyond the necessity of employing a competent fellow in that role. USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 17.

Regarding the petitioner's performance for the [REDACTED] he submits expert letters describing his performance for [REDACTED]. Within his first letter dated October 11, 2011, [REDACTED] Program Director for the [REDACTED] discusses the numerous conferences for which the petitioner has been invited to present his research. However, Dr. [REDACTED] did not assert within this letter that the petitioner has performed in a leading or in a critical role for any organizations or establishments that enjoy a distinguished reputation. The second letter from [REDACTED] Chapter Governor, discusses the petitioner's role as councilor of a portion of an Illinois [REDACTED] district. Dr. [REDACTED] indicates within the letter that there is only one councilor for the [REDACTED] in this area, and that it is the petitioner's responsibility as the councilor to "represent the needs of the regional cardiologists and their patients to the state and national [REDACTED] as policy decisions are being made." Although Dr. [REDACTED] indicates that it is the petitioner's responsibility to participate in policy decisions, he does not state, nor has he described the petitioner's duties or his performance in such a manner that the petitioner can be said to have performed in a leading role for the organization. It is expected that the petitioner will perform the routine duties of a council member within the district and that he will have some impact on policy decisions; however, merely serving as a council member does not equate to the petitioner performing in a leading role. Moreover, the petitioner has not demonstrated the distinguished reputation of the relevant [REDACTED] district.

The petitioner's appellate brief also identifies Dr. [REDACTED]'s letter as evidence of the petitioner's critical role as the "Primary Investigator at the [REDACTED] site for the national clinical research trial [REDACTED]." Within the record, the petitioner notes that this project is associated with [REDACTED]. Dr. [REDACTED] mention of the petitioner and this project reflects that the petitioner has been active in this research, that he performs the work "on his own free time and [he] is unreimbursed for it." The petitioner provides a second letter from Dr. [REDACTED] in response to the RFE dated June 19, 2013. Within this second letter, Dr. [REDACTED] references how important the petitioner's work on [REDACTED] "will be" in the future, but he does not describe how the petitioner's

performance has been leading or critical to the project. The remaining evidence that the petitioner's appellate brief identifies as being pertinent to [REDACTED] is a list of the petitioner's clinical research projects, and a July 24, 2012 email from [REDACTED] principal investigators inviting the petitioner to a [REDACTED] investigator meeting. The petitioner did not provide evidence from any personnel in an authoritative position within [REDACTED] indicating that he is a Primary Investigator, or is employed in a similar capacity.

Based on the above analysis, the petitioner has not submitted evidence that meets the plain language requirements of 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.<sup>5</sup> The petitioner must present evidence of objective earnings data showing that he 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 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).

The petitioner provided a [REDACTED] physician compensation report and the petitioner's 2012 Form W-2 Wage and Tax Statement. After receiving the RFE response, the director determined that the petitioner met the requirements of this criterion. The record does not support the director's favorable eligibility determination related to this criterion for the reasons outlined below.

The petitioner only submitted the first line of the [REDACTED] report. The petitioner did not submit evidence demonstrating whether this report reflects the average, mean, or top salaries of cardiologists. The petitioner must submit evidence of earnings in comparison with those performing work similar to the work he claims. As the petitioner claims that he is at the top of his field of endeavor, he must also provide earnings data for cardiologists at the top of the field. A similar position

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<sup>5</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

was expressed in accordance with *Matter of Price*, 20 I&N Dec. at 955; *see also Grimson*, 934 F. Supp. at 968 (considering NHL enforcer's salary versus other NHL enforcers); *Muni*, 891 F. Supp. at 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen rather than the mean salary of other hockey players in general). The Associate Commissioner in *Matter of Price* compared the alien's monetary earnings with his rankings among those in the top of his field, in the Professional Golfers' Association, performing similar work. Therefore, the petitioner must also provide earnings of those performing similar work (at the top of the field of endeavor) in accordance with *Matter of Price*, 20 I&N Dec. at 955.

As the petitioner has not provided earnings data for those in the top of his field in which to compare his earnings, he cannot demonstrate that he has met the plain language requirements of 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.<sup>7</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.

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<sup>7</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).

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.