

(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **SEP 26 2014** Office: NEBRASKA 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:

SELF-REPRESENTED

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,

m Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office on appeal.¹ We will dismiss the appeal.

The petitioner, a company director and media specialist, seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

On appeal, the petitioner submits various statements regarding her eligibility and additional evidence. In her appellate submission, the petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), (vii), (viii), and (ix).

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).

¹ The petitioner filed two Forms I-290B, Notice of Appeal or Motion, dated August 13, 2013 and August 14, 2013 appealing the director's July 17, 2013 decision. This decision incorporates the arguments and addresses both of the Form I-290B filings.

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, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which we did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria³

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

The petitioner submitted a March 10, 2012 [REDACTED] Award from the [REDACTED] association, which is "a part of the [REDACTED] [REDACTED] The petitioner's award from the [REDACTED] chapter of the [REDACTED]

² Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

⁴ "There are [REDACTED] local California clubs for [REDACTED] in most areas of the state." See [http://\[REDACTED\]](http://[REDACTED]), accessed on July 23, 2014, copy incorporated into the record of proceeding.

reflects local recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted evidence showing that she was among “more than 3300 people” nominated for the (2009). The plain language of this regulatory criterion requires the petitioner’s receipt of nationally or internationally recognized prizes or awards for excellence in the field. There is no evidence showing that the petitioner received an . Earning a nomination is not equivalent to receiving a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted three certificates from stating that she was a “Finalist” for in 2007 in the categories of “Self-Help: Inspirational,” “Health: Psychology,” and “Self-Help: Relationships.”⁵ In addition, the petitioner submitted a certificate stating that she was a “Finalist” for the in 2008 in the “Parenting & Family” category. Again, this regulatory criterion requires receipt of nationally or internationally recognized “prizes or awards,” not just qualifying as a finalist. There is no evidence showing that the petitioner won a in the preceding categories. Selection as a finalist is not a prize or an award, and does not meet the plain language requirements of this criterion.

The petitioner submitted a certificate from stating that she was a “Winner” in 2007 for the category of . The petitioner, however, did not submit evidence demonstrating the national or international recognition of her particular award. For instance, there is no evidence showing the number of other entries, if any, that her book competed against in the category so as to demonstrate national recognition. The plain language of this regulatory criterion specifically requires that the petitioner’s awards be nationally or internationally recognized in the field of endeavor and it is her burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner’s in the category of was recognized at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

In light of the above, the petitioner has not established that she meets this regulatory 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.

⁵ The online archive for 2007 lists more than one hundred winners and hundreds of finalists. See <http://www.7.pdf>, accessed on August 5, 2014, copy incorporated into the record of proceeding. In addition, according to a solicitation for entries posted on website, authors self-nominate their books, must pay an “Affordable Entry Fee [of] \$69.00 per title/per category,” and have “over 100 active categories to choose from.” See <http://www.1>, accessed on July 23, 2014, copy incorporated into the record of proceeding. Based on the preceding information, the petitioner has not shown that her are more than vanity book awards.

The petitioner submitted her [REDACTED] membership card and Certificate of Membership for the [REDACTED] in the United States. In addition, the petitioner submitted a document entitled "[REDACTED] Professional Code of Ethics" listing the association's conditions of membership. The petitioner has not established that complying with the [REDACTED] Code of Professional Ethics equates to "outstanding achievements."⁶ In addition, the submitted evidence

⁶ The [REDACTED] Professional Code of Ethics" states:

As a condition of membership, all members of [REDACTED] must subscribe to this Code of Professional Ethics. By doing so, members recognize the necessity to preserve and encourage fair and equitable practices among all who are engaged in professional speaking.

Violations of this Code are determined in accordance with [REDACTED] bylaws, policies and procedures. Any disciplinary action will be binding and final upon the [REDACTED] member and without recourse to the Association, its officers, members or staff.

Article 1. Representation - The [REDACTED] member has an obligation to oneself and to [REDACTED] to represent oneself truthfully, professionally and in a non-misleading manner. The [REDACTED] member shall be honest and accurate in presenting qualifications and experience in the member's communication with others.

Article 2. Professionalism - The [REDACTED] member shall act, operate his/her business, and speak in a most professional and ethical manner so as neither to offend nor bring discredit to oneself, the speaking profession or one's fellow [REDACTED] members.

Article 3. Research - The [REDACTED] member shall exert efforts to understand each client's organization, approaches, goals and culture in advance of a presentation, in order to professionally apply one's expertise to meet each client's needs.

Article 4. Intellectual Property - The [REDACTED] member shall avoid using – either orally or in writing – materials, titles or thematic creations originated by others unless approved in writing by the originator.

Article 5. Respect & Collegiality - The [REDACTED] member shall maintain a collegial relationship with fellow members based on respect, professional courtesy, dignity and the highest ethical standards.

Article 6. Confidentiality - The [REDACTED] member shall maintain and respect the confidentiality of business or personal affairs of clients, agents and other speakers.

Article 7. Business Practices - The [REDACTED] member is obligated to maintain a high level of ethical standards and practices in order to assist in protecting the public against fraud or any unfair practice in the speaking profession and shall attempt to eliminate from the profession all practices that could bring discredit to the speaking profession.

Article 8. Diversity - The [REDACTED] member shall not participate in any agreement or activity that would limit or deny access to the marketplace to any other speaker, to a client, or to the public. This shall include but not be limited to economic factors, race, ethnicity, creed, color, sex, age, sexual orientation, disability, religion, or country of national origin of any party.

does not show that members' achievements are judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of her membership in [REDACTED]

[REDACTED]

The petitioner also submitted certificates from the [REDACTED] stating that she "attained the level of Accredited Speaking Member" and that she received the [REDACTED] designation. There is no documentary evidence (such as bylaws, a constitution, or membership regulations) showing however that [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner's appellate submission includes a July 2013 letter from [REDACTED] General Manager, California Office, [REDACTED]. According to the [REDACTED] Company Profile" the petitioner submitted, [REDACTED] is a business entity that she manages and controls. Ms. [REDACTED] states:

[The petitioner] is a [REDACTED] upheld by the [REDACTED] since 2005 and is a current member both with the [REDACTED] [REDACTED] is an award credited only to Professional Speakers, who have excelled in their keynotes, customer references, testimonials and earned more than \$250,000 over a 2-year period, which [the petitioner] could substantiate along with only 1% of professional speakers worldwide.

Ms. [REDACTED] does not explain her affiliation, if any, with the [REDACTED] or specifically identify the source of her information about the requirements for the [REDACTED] designation. USCIS, therefore, need not rely on Ms. [REDACTED] unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 2013 WL 6571822, at *4, *6 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). There is no documentary evidence from the [REDACTED] showing the specific requirements for its [REDACTED] designation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, 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. 1136 (BIA 1998).

In light of the above, the petitioner has not established that she meets this regulatory criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted a review of her book [REDACTED] magazine (February 2004) and an article (date illegible) about her in [REDACTED] magazine entitled [REDACTED] but the petitioner did not submit evidence such as objective circulation figures showing that the preceding magazines are major media.

The petitioner submitted an advertisement in *Equanimity* for her [REDACTED] but the date and author of the material were not provided, and there is no evidence showing that [REDACTED] is a form of major media. In addition, the petitioner submitted an advertisement for [REDACTED] wedding, and bridesmaid dresses in [REDACTED] magazine. Photographs of the petitioner modeling a wedding gown appear in the advertisement, but the accompanying article was about [REDACTED] Exclusive's designer dressmaker business, not the petitioner. Furthermore, the author of the material was not identified and there is no evidence showing that [REDACTED] is a major trade publication or form of major media. The preceding advertising material, which is not the result of independent journalistic reportage, does not meet this regulatory criterion.

The petitioner submitted an article in [REDACTED] (December 2002 – January 2003) entitled [REDACTED]. This article constitutes health and lifestyle advice the petitioner authored, not published material about her. Therefore, the material does not meet the plain language requirements of this regulatory criterion. The regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).⁷ Furthermore, the petitioner has not established that [REDACTED] is a form of major media.

The petitioner submitted an article about her entitled "Mission to spread the happiness bug," but the title of the publication, its date, and the author of the material were not provided.

The petitioner submitted a June 8, 2007 interview of her in [REDACTED] entitled [REDACTED] in which she discusses how the United Arab Emirates' corporate culture can be improved, but the article is not about the petitioner. The petitioner also submitted a July 7, 2007 article in [REDACTED]. The article, however, is about the [REDACTED] event, not the petitioner. The plain language of the regulation requires "published material about the alien." Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). In addition, there is no evidence showing that [REDACTED] are major media.

⁷ The petitioner, however, does not claim to meet the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi). Even if the petitioner made such a claim, which she did not, the [REDACTED] article is not a "scholarly" article and was not shown to have appeared in a professional or major trade publication or some other form of major media.

The petitioner submitted an April 5, 2008 article about her in [REDACTED] but there is no evidence showing that the magazine is a form of major media.

The petitioner submitted a partial copy of an August 8, 2000 article in [REDACTED] entitled [REDACTED]. The article appears to be about how male demand for traditionally female beauty treatments is increasing, not the petitioner. Moreover, there is no evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a March 25, 2010 article in [REDACTED] but the article is about a consumer test of scented candles, not the petitioner. In addition, there is no evidence showing that [REDACTED] is a form of major media.

The petitioner submitted an article entitled [REDACTED] but only the title of the article is legible. Thus, we are unable to determine if the article is about the petitioner. In addition, there is no evidence showing that the article was in a professional or major trade publication or form of major media.

On appeal, the petitioner points to five books that she authored entitled [REDACTED]. The petitioner asserts, without supporting evidence (such as published or online rankings that list the top-selling titles based on an analysis of book sales in the foreign markets), that her books are “best-sellers” in various countries such as Australia, the United Arab Emirates, the United Kingdom, and Singapore. Again, USCIS need not rely on unsubstantiated claims. *See 1756, Inc.*, 745 F. Supp. at 15; *see also Visinscaia*, 2013 WL 6571822, at *4, *6. Further, 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. Regardless, the preceding books constitute material the petitioner authored, not published material about her in professional or major trade publications or other major media. Therefore, the books do not meet the plain language requirements of this regulatory criterion. Again, the regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).⁸ Furthermore, even if one or more of the preceding books were autobiographical in nature and therefore were about her, the petitioner has not established that the books equate to professional or major trade publications or other major media.

In light of the above, the petitioner has not established that she meets this regulatory 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 discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. When an appellant fails to offer argument

⁸ Even if the petitioner claimed to meet the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi), which she does not, the material that she authored does not equate to “scholarly articles” and was not shown to have appeared in professional or major trade publications or other major media.

on an issue, that issue is abandoned. *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) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

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

Instead, the petitioner states:

As you are now aware I am the director of 8 companies in the media field, 5 of which are based here in the USA, thanks to the MBA [Master of Business Administration] I passed at [REDACTED] BSc [Bachelor of Science] Degree in IT [Information Technology], my training at [REDACTED], Professional Speaking Experience and Media Training as well as my multiple companies I have successfully established on 4 continents. My doctorate was received based on my published papers on the correlation of [REDACTED] and packaged in my unique way to [REDACTED]

(Enclosed are the EIN [Employer Identification Number] numbers and company details. You already have copies of my Degrees, MBA and PhD information.)

The petitioner submitted EINs and Australian Company Numbers for the companies she has directed, but failed to provide tax returns showing her companies' annual revenues or business income. There is no documentary evidence showing that the petitioner's direction of eight companies rises to the level of original business-related contributions of major significance in the field. In addition, the regulations include a separate criterion for performing in a leading or critical role for distinguished organizations at 8 C.F.R. § 204.5(h)(3)(viii). Evidence relating to or even meeting the leading or critical role criterion is not presumptive evidence that the petitioner also meets this regulatory criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for contributions of major significance and performing in a leading or critical role for distinguished organizations, USCIS does not view those criteria as being interchangeable. To hold otherwise would render meaningless the

statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The petitioner points to her academic degrees, training at [REDACTED] professional speaking skills, media training, and experience establishing multiple companies, but there is no documentary evidence showing that her original work has affected her field in a major way, has substantially influenced the work of other managers in the media field, or otherwise equates to original contributions of major significance in the field. With regard to the petitioner's doctorate, master's degree, and bachelor's degree, we have held, in a precedent decision involving a lesser employment classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes an individual's ability to benefit the national interest. *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998). Thus, academic achievements are certainly not comparable to the original contributions of major significance in the field criterion set forth at 8 C.F.R. § 204.5(h)(3)(v), designed to demonstrate an individual's eligibility for this more exclusive classification. Assuming the petitioner's skills, educational qualifications, and experience are unique, the employment classification sought was not designed for alleviating skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

In addition, the petitioner states that her "doctorate was received based on [her] published papers on the correlation of [REDACTED]" but there is no evidence showing that the petitioner's published papers were frequently cited by business or mental health professionals, or that her published findings otherwise equate to original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, has substantially affected the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner submitted documentation showing that she gave a Teachers' Mass Lecture entitled [REDACTED] that she participated in the [REDACTED] trade fair and the [REDACTED]; and that she spoke at a Professional Speakers Association event in [REDACTED]. The petitioner's field, however, is in business rather than the arts. The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, she has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Accordingly, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The petitioner asserts that she has performed in a leading or critical role as “Director of 8 successful media and charitable companies in USA & Australia as founding president and CEO” [Chief Executive Officer]. The petitioner’s appellate submission includes a [REDACTED] Company Profile” (organizational chart) for her companies. Although the petitioner has performed in a leading role as Director, President, and CEO, there is no documentary evidence showing which, if any, of her eight companies has earned a distinguished reputation. Again, 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.

In addition, the petitioner asserts that she “served on the board of [REDACTED] Australia. The petitioner submits a “Certificate of Recognition for ‘stepping up’ to serve the membership of [REDACTED] on the Marketing Team of the 2004 [REDACTED] Committee.” The petitioner also submits a Certificate of Recognition for “valued assistance and guidance on Executive Committee [REDACTED] Chapter 2004 Secretary for [REDACTED] of Australia.” Both certificates were issued by the [REDACTED] the [REDACTED] President. Although the petitioner states that she “served on the board of [REDACTED] of Australia, the preceding certificates indicate that her service was with the [REDACTED], not the board for the national association. Again, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 15. Furthermore, there is no documentary evidence showing that the [REDACTED] has a distinguished reputation.

The petitioner also asserts that she is a member of [REDACTED]. The petitioner submits a letter from [REDACTED] stating that the [REDACTED] chapter presented the petitioner with a [REDACTED] Award in March 2012. In addition, Ms. [REDACTED] states that the petitioner was recognized for her “talents as an author, television host and philanthropist,” not for her specific contributions to the [REDACTED] association. Ms. [REDACTED] further states that the petitioner “is now an active member of [REDACTED] I [REDACTED] and is playing an active role in our Association’s Activities.” Ms. [REDACTED] however, does not state that the petitioner’s role as a member is leading or critical to the association. In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner’s contributions to the organization or establishment. The petitioner did not provide an organizational chart or other similar evidence to establish where her role fit within the overall hierarchy of [REDACTED]. The submitted documentation does not differentiate the petitioner from the other members so as to demonstrate her leading role, and fails to establish that she contributed to the [REDACTED] chapter in a way that was significant to the association’s success or standing. Furthermore, there is no documentary evidence showing that [REDACTED] has a distinguished reputation.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

On appeal, the petitioner asserts that she is “in the top 1% of earners in the speaker industry earning \$50,000 per keynote and \$100,000 for consultancy and training for the day.” The petitioner submits a July 2013 letter from [REDACTED] that states:

[The petitioner] is booked regularly because of her experiences as a serial entrepreneur, entertainer and best-selling author.

* * *

Comparable Speakers['] Payments are as follows:
We have 3 tiers of speakers:

Trainers and Experts: whose usual fee is \$1000 to \$2000 per hour.

Authors and Business Executives \$5,000 to \$10,000 per hour.

Premium Speakers: Fees \$30,000 to \$100,000 per hour.

These include Sports Players, U.S. Presidents and people of exceptional experiences or abilities. As an exceptional speaker, entrepreneur and multiple award winning author, in Australia, Singapore, Dubai and USA [sic]. We book [the petitioner] at \$50,000 per hour and \$100,000 for 6 hours Consulting.

The petitioner, however, failed to submit documentary evidence (such as payroll records or income tax forms) to demonstrate the actual remuneration that she earned for her speaking or consulting engagements. Again, 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. In addition, the petitioner must demonstrate a high salary or other significantly high remuneration for services “in relation to others in the field,” not limited only to speakers booked by the [REDACTED] agency (a business entity controlled by the petitioner as indicated in the [REDACTED] Company Profile”).

The petitioner must present evidence of objective earnings data showing that she has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *see also 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); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). The petitioner, however, offers no reliable basis for comparison showing that she has received a high salary or significantly high remuneration relative to others in her field who perform similar work.

As the petitioner did not submit evidence of her actual earnings for any specific year and present a proper basis for comparison showing that she has earned a high salary or other significantly high remuneration for services in relation to others in the field, the petitioner has not established that she meets this regulatory criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although the petitioner does not specifically claim eligibility for this criterion, she asserts in her appellate submission that she has “written 40 songs,” performed songs such as [REDACTED] and [REDACTED]’ and written “3 movie screenplays.” The petitioner, however, has not submitted documentation of record sales or box office receipts demonstrating her commercial successes in the performing arts. Again, 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. The plain language of this regulatory criterion requires “evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.” There is no documentary evidence of receipts or sales demonstrating that the petitioner has achieved commercial successes in the recording or motion picture industries.

In light of the above, the petitioner has not established that she meets this regulatory criterion

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although 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.⁹ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁹ The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, 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).