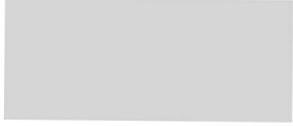


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: APR 27 2015

Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an alien of extraordinary ability as a computer science engineer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to beneficiaries who the petitioners can demonstrate extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of the beneficiary's one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner asserts that the beneficiary meets the criteria under the regulatory subparagraphs at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (viii) and (ix). For the reasons discussed below, we agree with the director that the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of the beneficiary's one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that establishes that the beneficiary satisfies at least three of the ten regulatory criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that the beneficiary is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

## 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) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence showing that the beneficiary meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

## II. ANALYSIS

### A. The Petitioner's Qualifications

The record includes evidence and a number of documents relating to the petitioner. In his response to the director's request for evidence (RFE), the petitioner asserts that he became a Lawful Permanent Resident in 1967, then a United States Citizen in 1972, based on a recognition of his extraordinary ability. The petitioner further asserts that the beneficiary is "of similar [ability] and exceeds [the petitioner's ability]" and therefore she qualifies for the exclusive classification sought. At issue here is not the petitioner's qualifications and how the beneficiary compares to the petitioner. At issue here is the beneficiary's qualifications and how the beneficiary compares to others in the field. In addition, the petitioner seeks to classify the beneficiary under regulations that date from 1991 and, thus, did not exist when the petitioner became a lawful permanent resident. Moreover, the record does not include evidence showing that the field has remained static between 1960s and

today, such that someone who qualified for permanent residency 50 years ago would qualify as an individual of extraordinary ability today. Accordingly, the petitioner's immigration history is irrelevant in the adjudication of the instant petition.

#### B. The Beneficiary's Peer Group

On appeal, the petitioner states that the beneficiary's accomplishments exceed those of her "Peer Age Group." The petitioner further states that the "older [one] get[s] the more qualified one will be to meet the [extraordinary ability] qualification[s]." According to the petitioner, comparing the beneficiary with the entire field constitutes "Age Discrimination against YOUNGER Promising and Rising stars." (Capitalization as it appears in the original.) We agree that under the relevant statute, regulations and case law, the age of a beneficiary is not a consideration and does not, in and of itself, preclude eligibility. Nevertheless, the pertinent issue is whether the beneficiary has sustained national or international acclaim in her field and whether she is one of the small percentage who have risen to the very top of her field. To establish the beneficiary's eligibility for the exclusive classification, the beneficiary must be compared to those in her field, not merely those in her age group.

#### C. Supporting Evidence

We will discuss all of the petitioner's statements below. When reviewing those statements, however, we note that 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)). Accordingly, the director requested specific evidence to support the petitioner's statements, such as the constitution or bylaws for the honor societies of which the beneficiary is a member. The petitioner did not submit evidence to support many of his assertions. Where the petitioner relies solely on his own statements, without supporting evidence, he has not met his burden of proof of submitting evidence that satisfies the plain language requirements of the particular regulation. Finally, we need not accept primarily conclusory assertions that are not substantiated by evidence in the record. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

#### D. Evidentiary Criteria<sup>1</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of the beneficiary's one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through the evidence that the beneficiary is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten

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<sup>1</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts he meets or for which the petitioner has submitted relevant and probative evidence.

types of evidence relating to the beneficiary under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the petitioner asserts that the beneficiary meets this criterion because she has been “[r]ecruited by the top rated software [r]esearch [redacted] and the [redacted] to be their Advanced Master program for her excellence in the field of Computer Science and Software.” The petitioner has not shown that the beneficiary meets this criterion.

First, the petitioner has not shown that offers of admission constitute prizes or awards for excellence in the field. The record includes a February 2012 letter from [redacted] offering the beneficiary admission to its Master of Science in Information Technology (MSIT) eBusiness Technology Program. The record also includes a March 2012 letter from the [redacted] offering the beneficiary admission to its Master of Science in Information Management (MSIM) Program. The beneficiary’s selection into an educational program shows that the school, after comparing the beneficiary with other applicants, determined that the beneficiary qualified for the program. The selection does not signify that the school granted the beneficiary a prize or award. Indeed, neither letter indicates that an offer of admission constitutes a prize or award, as required by the plain language of the criterion. In short, the record lacks evidence showing that an offer of admission, even if it was for a competitive program, constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In addition, the petitioner has not shown that the applicant pool for admission includes individuals who are already established in the field rather. The applicant pool for a degree program is limited to individuals seeking to enter an educational program, which usually are students or entry-level professionals. As such, even if the selection signifies the beneficiary’s standing among other students or entry-level professionals, this accomplishment does not demonstrate the beneficiary’s excellence in the field as a whole, which includes experienced, accomplished and senior-level professionals who have completed their education. The completion of a degree program, which is requires acceptance to such a program, is only evidence for the lesser classification, aliens of exceptional ability, under section 203(b)(2) of the Act. 8 C.F.R § 204.5(k)(3)(ii)(A).

Second, the record includes evidence of prizes and awards that the beneficiary received when she was a student. The director concluded that these awards and prizes do not meet the criterion, because they are usually given to “students or early career professionals in the field” and often “exclude established professionals who have already achieved excellence in the field of endeavor. On appeal, the petitioner has not specifically challenged this aspect of the director’s decision. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Regardless, the petitioner has submitted no evidence – such as, documents from the prize or award issuing entities, relating to the selection criteria, or media coverage of the beneficiary’s receipt of the prizes and awards in nationally or internationally circulated publications or other forms of media – that demonstrates that the prizes and awards the beneficiary received as a student are either nationally or internationally recognized or that the prizes or awards are given in recognition of the beneficiary’s excellence in the field as a whole.

Accordingly, the petitioner has not presented documentation of the beneficiary’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

*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.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that the beneficiary meets this criterion because she is a member of [REDACTED] which “bestows National High Honor to be recognition of a top Senior in the Field of Management Information System, an important branch of Computer Science and/or Computer Software Engineering.” The petitioner also indicates on appeal that “[REDACTED] bestows top Honor to Nation’s outstanding Business Professional.” The petitioner has not submitted sufficient evidence showing that the beneficiary meets this criterion.

To meet this criterion the petitioner has to demonstrate the beneficiary’s membership in qualifying associations. To establish an association is qualifying, the petitioner must show that the association “require[s] outstanding achievements of [its] members,” and that the “outstanding achievements” are “judged by recognized national or international experts in their disciplines or fields.” *See* 8 C.F.R. § 204.5(h)(3)(ii).

In this case, although the petitioner has established the beneficiary’s membership in both [REDACTED] and [REDACTED] the petitioner has not shown that either organization is a qualifying association under the plain language of the criterion. Specifically, the record includes no evidence, such as the organizations’ constitutions or bylaws that the director requested, relating to the membership requirements for either organization, or who judges an applicant’s qualifications for membership. Without such evidence, the petitioner has not shown that either organization requires “outstanding achievements of [its] members, as judged by recognized national or international experts in their disciplines or fields.” *See* 8 C.F.R. § 204.5(h)(3)(ii).

Although the petitioner has asserted that [REDACTED] and [REDACTED] are both honor societies, the mere fact that the organizations are classified as honor societies does not establish they are qualifying associations under the criterion. At issue here are the membership requirements of the organizations and whether the membership requirements require an applicant to show “outstanding achievements . . . as judged by nationally or internationally recognized experts.” The record lacks

evidence that is relevant to this inquiry, including the constitutions or bylaws of the relevant honor societies that the director requested.

On appeal, the petitioner has not continued to assert that the beneficiary's membership in the [REDACTED] meets this criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at \*9. Moreover, the petitioner has not submitted sufficient evidence relating to [REDACTED] membership requirements, such that we may conclude that the organization constitutes a qualifying association under the criterion.

Accordingly, the petitioner has not presented documentation of the beneficiary'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. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the petitioner asserts that the beneficiary has made “[m]ajor accomplishments in [s]oftware development, which has been posted on the proprietary Company [REDACTED] website for the past year since the [b]eneficiary joined the Company.” To meet this criterion, the petitioner must demonstrate that the beneficiary's contributions are both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). In other words, the petitioner must show that the beneficiary's contributions are original, such that she is the first person or one of the first people to have done the research or work in the field, and that her contributions are of major significance in the field, such that her research or work fundamentally changed or significantly advance the field as a whole. In addition, contributions of major significance connotes that the beneficiary's work has already significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134-36. The record does not support a finding that the beneficiary has made original contributions of major significance in the field.

First, the record includes no evidence that the beneficiary's work has been posted on her employer's website. Moreover, the record does not include evidence demonstrating that contents posted on the beneficiary's employer's website constitute the beneficiary's “original contributions . . . of major significance in the field.” The petitioner asserts that the beneficiary's employer is the top information technology company in the country. The petitioner, however, has not submitted any evidence in support of either assertion. For example, the petitioner did not submit letters from the beneficiary's current employer explaining the nature and significance of the beneficiary's work for them, screen shots from the employer's website crediting the beneficiary with work posted there, and evidence of the work's influence on the field. The May 8, 2013 letter from [REDACTED] offering the beneficiary a position as a software engineer does not demonstrate the significance of

the beneficiary's work upon accepting that position. For the reasons discussed above in subsection C above, the petitioner's conclusory and unsupported assertions are insufficient.

Second, the petitioner's statements and letters do not establish that the beneficiary meets this criterion. According to an undated letter from the petitioner, the beneficiary's "dedication/Hardwork [sic] towards her education and extra curriculum [sic] activities demonstrated clearly her Exceptional Ability right from the start and continuing through the 7 years that [he has] know[n] her." The letter further states that the beneficiary's "Trail Blazing consistent accomplishments have been truly outstanding for a young lady of just 25 years old today. Her Extraordinary Abilities go far beyond her contemporary Professionals in the field of Science and Technology." The letter contains general praise of the petitioner's character and abilities, but does not specifically note what the petitioner has done that meets this criterion. The petitioner has also submitted a document entitled "Statement on [the Beneficiary], for whom this Petition is Filed" that discusses the petitioner's educational and employment background, personality and characters. This document, however, similar to the petitioner's undated letter, does not specifically note what the petitioner has done that constitutes original contributions of major significance to the field as a whole. At issue for this criterion is not the beneficiary's education and work experience. Rather, at issue is the beneficiary's impact in the field, for which the petitioner must show that the beneficiary's impact is both original and of major significance. Moreover, regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). The petitioner's statements and letters are insufficient to show that the beneficiary meets this criterion.

Third, other evidence in the record similarly does not establish that the beneficiary meets this criterion. For example, the evidence shows that the beneficiary served as an undergraduate teaching assistant for [REDACTED] Associate Professor, Management Information Systems, Director of [REDACTED] Professor [REDACTED] states that the beneficiary "was the best teaching assistant [Professor [REDACTED] has] ever had" and that the beneficiary "worked patiently with the students and helped [Professor [REDACTED]] out in many different ways: grading assignments, producing sample programs, conducting office hours, and running review sessions." On appeal, the petitioner asserts that it is unusual for an undergraduate student to serve as a teaching assistant. The petitioner's assertion is not support by any evidence in the record. Moreover, the fact that it might have been unusual for an undergraduate student to be a teaching assistant is not indicative of the beneficiary's original contributions of major significance in the field. Rather, it reveals she was capable of providing useful services to a single professor. The beneficiary's teaching assistant position does not demonstrate that she meets this criterion.

Vague letters from individuals who know the beneficiary, but do not specifically identify contributions or provide specific examples of how those contributions influenced the field are

insufficient to meet this criterion.<sup>2</sup> *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the beneficiary's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190); *See Visinscaia*, 4 F. Supp. 3d 126, 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Accordingly, the petitioner has not presented evidence of the beneficiary's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that the beneficiary meets this criterion because she performed a leading or critical role for the [REDACTED] Chapter where she served as its president in 2011 and 2012. The petitioner further asserts that [REDACTED] "is the largest organization in the World to honor top extraordinary professionals." The evidence in the record does not demonstrate that the beneficiary meets this criterion. Specifically, the petitioner has submitted insufficient evidence showing that the [REDACTED] Chapter constitutes an organization or establishment that has a distinguished reputation. The record includes the petitioner's [REDACTED] membership certificate and a July 1, 2011 letter from the organization, verifying the petitioner's role as the President of the [REDACTED] Chapter. According to an online printout about the [REDACTED] Chapter, the organization "welcome[s] prospective members who are in the top 15% of their class and who are interested in service and leadership development." The printout further says that the [REDACTED] Chapter "became seriously active in 2010" and has "participate[d] in numerous [sic] service activities throughout the academic year as well as a number of other engaging activities." Neither this printout nor any other evidence in the record is

<sup>2</sup> In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

sufficient to demonstrate the reputation, prestige or recognition of the Chapter.

To the extent the petitioner is asserting that the beneficiary has performed a leading or critical role for the as a whole, not merely for its Chapter, the evidence in the record does not support this assertion. The record includes no documents from the that discuss the beneficiary's role in the organization as whole or that demonstrate the beneficiary has performed either a leading or critical role for the organization as a whole. While the letter from the verifies the beneficiary's position as the Chapter's President, it does not address the role the petitioner has had in the organization as whole.

Accordingly, the petitioner has not presented evidence showing that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

On appeal, the petitioner asserts that the beneficiary meets this criterion because the petitioner received "\$180k annual salary in 2013." The evidence in the record does not support the petitioner's assertion and does not establish that the beneficiary meets this criterion.

The record includes a May 8, 2013 offer of employment from , that offered the beneficiary a position as a Software Engineer, with an annual salary of \$107,000 and a one-time bonus of \$10,000. According to this letter, the petitioner was offered a salary and other remuneration of \$117,000, not \$180,000 for her first year with . The record also includes a January 2014 employment verification document, noting that the beneficiary began working for , on October 7, 2013 at an annual rate of \$107,000, and the beneficiary's 2013 Wage and Tax Statement, Internal Revenue Service Form W-2, showing that she earned wages, tips and other compensation of \$45,213.69. While this amount for one quarter of the year is one fourth of over \$180,000, the amount includes other compensation, which may include a year-end bonus that would not be indicative of a \$180,000 annual salary.

Significantly, the petitioner has submitted no evidence relating to the salary or other remuneration (including bonuses) of others in the field, from which we may compare the petitioner's salary of \$107,000 and potential bonus of \$10,000. The plain language of the criterion requires the petitioner to show that the beneficiary "has commanded a high salary or other significantly high remuneration for services" as compared "to others in the field." Without evidence of the compensation level of others in the field, the petitioner has not shown that the beneficiary's compensation constitutes "a high salary or other significantly high remuneration for services, in relation to others in the field." See 8 C.F.R. § 204.5(h)(3)(ix).

Accordingly, the petitioner has not presented evidence that the beneficiary has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

#### E. Summary

We have considered all the evidence in the record, including evidence not specifically mentioned above, and for the reasons discussed above, we agree with the director's finding that the petitioner has not submitted the requisite initial evidence, in this case, evidence relating to the beneficiary that satisfies three of the ten regulatory criteria.

### III. CONCLUSION

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

Had the petitioner submitted the requisite evidence relating to the beneficiary 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 [beneficiary] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [beneficiary] has sustained national or international acclaim and that . . . 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. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence relating to the beneficiary that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.<sup>3</sup>

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.

<sup>3</sup> We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); 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).

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*NON-PRECEDENT DECISION*

**ORDER:** The appeal is dismissed.