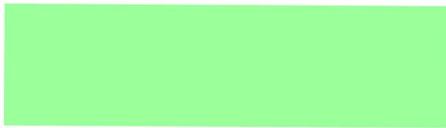




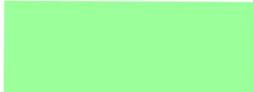
U.S. Citizenship
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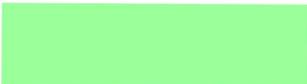
DATE: FEB 10 2015

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:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” as an 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 aliens who can demonstrate their 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 a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief with documentation that was previously submitted and claims that he meets at least three of the ten regulatory criteria. For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he 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 alien’s sustained acclaim and the recognition of the alien’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 that 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. Evidentiary Criteria¹

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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average,

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In his decision, the director indicated that the petitioner claimed eligibility for this criterion based on his membership with the [REDACTED] and the [REDACTED]. The director found that although the petitioner submitted evidence demonstrating his membership in these associations, the petitioner did not provide evidence that outstanding achievements are required for membership. Furthermore, the director stated that although the petitioner was notified that additional evidence was required to establish eligibility, the petitioner did not provide any additional evidence in response to the director's April 2, 2014 request for evidence (RFE).

On appeal, the petitioner claims his eligibility for this criterion is based on "evidence that he is one of only a few 'members' of the group of individuals who have been Certified as Experts, authorized to provide expert testimony on engineering issues in court and arbitration proceedings." In addition, the petitioner claims eligibility based on his membership with the [REDACTED].

Regarding the petitioner's claim as a certified expert, the petitioner submitted letters from [REDACTED] Chairman of the Committee of the [REDACTED] who claimed that the petitioner's application was approved "in the book of expert's [sic] and arbitrators of the organization," and [REDACTED] legal advisor to [REDACTED] who claimed that "all members . . . are required to be experienced and well known engineers, and leaders in their field." Although not addressed by the director in his decision, the translations accompanying the letters do not meet the requirements of the regulation at 8 C.F.R. § 103.2(b) that provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The petitioner submitted a single certificate of translation for all of the foreign language documents at the initial filing of the petition and again in response to the director's RFE, it is unclear, however, which documents, if any, to which the certifications pertain. The submission of a single translation certification for each submission that does not identify the document or documents it claims to accompany does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence has no probative value and will not be considered in this proceeding. Notwithstanding, we are not persuaded that having experience, being well-known, and being a leader in the field equate to outstanding achievements. Moreover, the petitioner did not submit any documentary evidence establishing that membership with [REDACTED] is judged by recognized national or international experts in the field.

Regarding [REDACTED], the petitioner submitted a letter from [REDACTED] General Manager for [REDACTED] who outlined the petitioner's various roles and contributions for [REDACTED], such as treasurer, member of the management, and member of the managing committee. In addition, the petitioner submitted screenshots from [REDACTED] that reflect the association's history, achievements, goals, and services. The petitioner also submitted screenshots from the [REDACTED] reflecting that [REDACTED] is a member of [REDACTED]. Although on appeal the petitioner emphasizes [REDACTED] affiliation with [REDACTED] the petitioner did not submit any documentation regarding [REDACTED] membership requirements. The petitioner did not demonstrate that membership with [REDACTED] requires outstanding achievement as judged by recognized national or international experts, consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Finally, the petitioner did not contest the findings of the director regarding [REDACTED]. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner did not establish that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Although a review of the record of proceeding reflects that the majority of the petitioner’s evidence consisted of uncertified translations that cannot be considered, the petitioner submitted a letter from [REDACTED], who provided details of audits conducted by the petitioner for the [REDACTED] and [REDACTED].” As such, the petitioner submitted sufficient documentary evidence demonstrating that he meets the plain language of this regulatory criterion. Therefore, we agree with the director’s findings for this criterion.

Accordingly, the petitioner established that he meets this criterion.

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

The plain language of 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.” Here, the evidence must rise to the level of original 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).

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims that although he submitted samples and excerpts of the audits he performed, court cases in which he was called as an expert witness, and contracts for his company's engineering services, the director did not discuss any of his evidence but instead focused on discounting his testimonial letters. A review of the record of proceeding reflects that on April 2, 2014, the director issued an RFE pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). In the RFE, the director listed the petitioner's evidence, including the witness testimony and audit evidence, and indicated that the evidence did not reflect that his contributions were of major significance. The director also notified the petitioner of examples of evidence that the petitioner could submit to establish eligibility. In response, the petitioner submitted previously submitted evidence and additional reference letters. In his decision, the director noted the previously submitted documentation and determined that the additional reference letters did not demonstrate that the petitioner's contributions have been of major significance in the field. Regardless, we will review the documentation and determine whether the petitioner established that he has made original contributions of major significance in the field consistent with the plain language of this regulatory criterion. 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).

Regarding the petitioner's claim as an expert witness, the petitioner submitted an uncertified translation of the previously discussed letter from [REDACTED]. In addition, the petitioner submitted an uncertified translation of a document regarding the petitioner's expert opinion on behalf of the [REDACTED] and the [REDACTED]. Further, the petitioner submitted an uncertified translation of a letter from [REDACTED] Commander for Crime Investigations, to the petitioner requesting his professional opinion of [REDACTED]. Finally, the petitioner submitted a screenshot from [REDACTED] regarding the arrest of 20 employees of [REDACTED] for colluding with contractors performing infrastructure work in order to embezzle money from the company.

Again, with the exception of the [REDACTED] screenshot that was originally in the English language, the petitioner submitted uncertified translations that do not comply with the regulation at 8 C.F.R. § 103.2(b) and thus have no probative value. Regardless, the documentary evidence does not reflect that the petitioner's contributions have risen to a level of major significance in the field as a whole. Rather, the evidence reflects the petitioner's contributions to his limited engagements, such as his professional opinion to the [REDACTED] investigation. The petitioner did not submit any documentation that indicated how his professional and expert testimony has impacted or influenced his engineering field. Simply submitting documentation reflecting the petitioner's contribution as an expert witness is insufficient to meet the plain language of this regulatory criterion without evidence to show that his expert testimony has been of major significance to the field.

Similarly, regarding the petitioner's claim as an auditor, the petitioner submitted an uncertified translation of a document for an audit of the construction of the [REDACTED]; an uncertified translation of a letter from [REDACTED] City Comptroller for [REDACTED], regarding [REDACTED] audit of the Engineering Department; an uncertified translation of a contract between the [REDACTED]; an uncertified translation of a letter from [REDACTED] Municipality Comptroller for [REDACTED], regarding the audit for two projects

by [REDACTED] and headed by the petitioner; and an uncertified translation of a letter from [REDACTED] City Comptroller for [REDACTED], regarding an audit of an engineering project conducted by [REDACTED] and headed by the petitioner.

Once again, the uncertified translations submitted do not comply with the regulation at 8 C.F.R. § 103.2(b)(3). While, some of the documentation only indicates that [REDACTED] conducted the audits without any reference to the petitioner's contributions, the letters from [REDACTED] and [REDACTED] indicate that the petitioner led the audits. Nonetheless, the letters only reflect the impact that the audits had on the projects in their municipalities. The petitioner did not submit any other documentation to demonstrate that his audits have been of major significance in the field pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The petitioner also submitted reference letters from [REDACTED] and [REDACTED] and the previously discussed letter from [REDACTED]. According to Mr. [REDACTED] the petitioner developed an "audit methodology," and the petitioner and [REDACTED] "are the first auditors to provide a report such as this in Israel." Further, [REDACTED] indicated that engineers in Israel "have adopted the standards proposed by [the petitioner] and [REDACTED]." Moreover, [REDACTED] stated that the petitioner's "system actually improves the quality of work performed by all major engineering firms in Israel."

Although the letters credit the petitioner for developing an "audit methodology," "standards," or "system," the petitioner did not submit any objective evidence demonstrating the originality of his work. Moreover, the petitioner did not establish that his work is considered an original contribution of major significance in the field as whole. The supporting letters only discuss the implementation of the petitioner's methodology in cities in Israel rather than to the field of engineering.

The opinions of the petitioner's references 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 International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony is not evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, 4 *F.Supp.3d* at 134-135 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Even if the petitioner established that his "audit methodology" is an original contribution of major significance in the field, which he did not, the use of the plural in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must show that he has made more than one original

contribution of major significance in the field. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Without additional, specific evidence showing that the petitioner’s work is original and has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, the petitioner did not 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims that he meets this criterion based on his role as lead engineer and owner of [REDACTED] and as treasurer and member of management of [REDACTED].

Regarding [REDACTED], the petitioner submitted sufficient documentary evidence establishing that he performed in a leading role for [REDACTED] as both the lead engineer and co-owner of the business. On appeal, the petitioner claims that “[a]s [REDACTED] performed major engineering work for entire cities and major private companies, [REDACTED] is a ‘distinguished organization.’” Although the petitioner submitted documentation, including uncertified translations, that reflects contracts and completed work with businesses and governments, such as [REDACTED] and Israel [REDACTED], we are not persuaded that simply performing work for businesses and governments establishes the distinguished reputation of [REDACTED]. The petitioner did not submit any documentation that differentiates [REDACTED] from other engineering businesses. The petitioner, for example, did not submit any awards or

recognitions that [REDACTED] received for its work in the field, so as to demonstrate that it enjoys a distinguished reputation.

Regarding [REDACTED], as discussed under the membership criterion, the petitioner submitted a letter from [REDACTED] who indicated that the petitioner held the positions of treasurer, member of management, and member of the managing committee. On appeal, as evidence of [REDACTED] reputation, the petitioner referred to the previously discussed screenshots from [REDACTED] reflecting that [REDACTED] is a member and the screenshots from [REDACTED] reflecting its history, achievements, goals, and services. In addition, the petitioner submitted an uncertified translation of an unidentified screenshot about [REDACTED] claiming that “[REDACTED] IS A MEMBER of the [REDACTED] and is represented in the Bureau of the President.” On appeal, the petitioner claims that “[t]he fact that the [REDACTED] is related to [REDACTED] confirms that the [REDACTED] is ‘distinguished.’” We are not persuaded that simply being related or affiliated with other organizations establishes the distinguished reputation of [REDACTED]. Similarly, the petitioner did not submit any documentation regarding [REDACTED] membership requirements, so as to establish that [REDACTED] membership status with [REDACTED] reflects [REDACTED] distinguished reputation. Besides submitting evidence of [REDACTED] affiliation with [REDACTED] and [REDACTED] the petitioner has not offered any evidence that demonstrates [REDACTED] reputation consistent with the regulatory criterion that requires that the organizations or establishments to “have a distinguished reputation.”

Accordingly, the petitioner did not establish that he meets 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 director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

A review of the record of proceeding reflects that the petitioner submitted a letter from [REDACTED], who stated:

I hereby confirm that the annual income of [REDACTED] in 2012 was 2.2 million Nis(630,000\$),and [sic] in 2013 ~2.7 million Nis (770,000\$)
[REDACTED] has four employees and the actual revenue for the owner [the petitioner] in the year 2013 after the expanses [sic] was 1.1 million Nis.

The petitioner also submitted a screenshot from XE Currency Converter reflecting that 1,100,000 Israeli Shekel is equivalent to \$316,727. The petitioner, however, did not submit any primary evidence of his salary such as paystubs or income tax documentation. Moreover, the letter does not reflect the petitioner’s salary. Rather, the letter refers to the petitioner’s “actual revenue” from the business, which

has four employees. While the tax return of the business may reflect the petitioner's success as a businessman, he seeks eligibility as an engineer, not as an entrepreneur. There is no evidence demonstrating that actual revenue is the petitioner's salary independent of the efforts of his employees. As the petitioner has not established his salary at [REDACTED] he has not demonstrated that he commands a high salary compared to others in his field.

In addition, the petitioner submitted a screenshot from www.flcdatacenter.com for civil engineers in the [REDACTED] metropolitan area. The Foreign Labor Certification (FLC) Data Center's Online Wage Library relies on the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) wage estimates.² The OES program collects data on wage and salary workers in nonfarm establishments in order to produce employment and wage estimates for about 800 occupations. The BLS produces occupational employment and wage estimates for over 450 industry classifications at the national level. The employment data are benchmarked to average employment levels.³ The plain language of the regulation requires the petitioner to establish that his salary is high when compared to others in the field. As such, average statistics limited to one particular area do not meet this requirement.

The plain language of this regulatory criterion requires evidence of "a high salary or other significantly high remuneration for services, in relation to others in the field." The petitioner offers no basis for comparison showing that his earnings were high in relation to others in his field. The record contains no objective earnings data showing that the petitioner 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 a 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). In the present case, the evidence the petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field. Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner did not establish that he meets this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

² See <http://www.flcdatacenter.com/faq.aspx>.

³ See http://www.bls.gov/oes/oes_emp.htm#estimates.

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 his or her 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 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. 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 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.⁴

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.

⁴ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d at 145. 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).