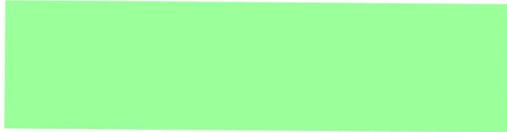


(b)(6)

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



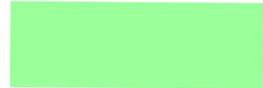
U.S. Citizenship  
and Immigration  
Services



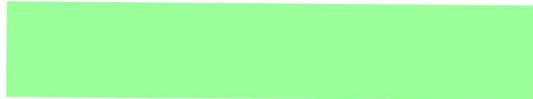
DATE: JAN 26 2015

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 classification as an “alien of extraordinary ability” in the arts, 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 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 statement with additional documentary evidence. 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 are 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. 723 101<sup>st</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Criteria<sup>1</sup>

The director determined that the petitioner met the plain language requirements of the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). The director then provided the following specific reasons why the petitioner did not satisfy the other criteria he claims to satisfy:

- Regarding the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the director indicated that the petitioner had not provided evidence that his prizes or awards were nationally or internationally recognized;
- Regarding the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the director indicated the petitioner had not demonstrated that the organizations in which he claims membership required outstanding achievements of their members;
- Regarding the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the director indicated that the petitioner did not submit certified translations of the foreign language documents, the petitioner did not establish that the published material appeared in a

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

professional or major trade publication, or other major media as required by the regulation, and he did not provide published material that was about him and relating to his work in the field;

- Regarding the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), the director concluded that while the petitioner had not expressly claimed to meet this criterion, the recommendation letters the petitioner submitted were insufficient to establish that the petitioner had made contributions of major significance.
- Regarding the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the director concluded that the record did not contain evidence relating to this criterion.
- Regarding the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x), the director indicated that petitioner did not support the submitted evidence, including a list of several [REDACTED] “sites along with statements of soundtracks, dvd [sic] recordings and books,” with evidence to corroborate the petitioner’s claims of his commercial success in the performing arts.

Within the petitioner’s appellate statement, he claims that the additional evidence will demonstrate that he satisfies the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x). The petitioner also addresses the director’s comment relating to the recommendation letters being from the petitioner’s circle of acquaintances.

Although the petitioner indicates in Part 3 of the Form I-290B that his appeal would address the prizes or awards criterion, his subsequent statement and additional evidence that he submitted on March 7, 2014 does not contain any reference or evidence relating to his prizes or awards. Therefore, the petitioner has abandoned his claims under this criterion. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11<sup>th</sup> Cir. 2009) *citing Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir.1979). Nevertheless, we note that, beyond the concerns the director raised, the evidence lacks evidence that the petitioner is the actual recipient of the awards as opposed to having worked on award winning albums. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

Regarding the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner initially submitted a registry of songs the petitioner recorded as evidence of his membership in the [REDACTED]. In the request for additional evidence, the director expressly requested the relevant sections of the association’s constitution or bylaws to establish the requirements for membership, information about those who judge prospective members and evidence of the goals, mission or target membership of the association. In response, the petitioner submitted evidence that [REDACTED] have received the petitioner’s music. The petitioner’s response did not address the membership requirements of [REDACTED]. The director concluded that [REDACTED] was not a qualifying membership. On appeal, the petitioner submits a February 23, 2014 letter from [REDACTED] [title is in foreign language], of [REDACTED]

Ms. [REDACTED] confirms that the petitioner is a member of the association and indicates that the criteria to be part of this association are:

- Number of records sold[;] and/or
- High remuneration[;] and/or
- Importance of the artist in the music scene[;]
- Influence on the national market, among other criteria.

Ms. [REDACTED] also asserts that music producers and artistic directors of major labels such as [REDACTED] as well as journalists, evaluate prospective members. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we need not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.* Regardless, Ms. [REDACTED] letter does not include sufficient detail relating to these criteria to establish that the association requires outstanding achievements. For example, if the being part of this association only requires an artist to sell an above average number of records, above average sales are generally not sufficient to demonstrate the artists' outstanding achievements in the field. Moreover, Ms. [REDACTED] does not identify the "other criteria." At issue is whether the association requires outstanding achievements for membership, not whether outstanding achievements are one way to become a member. Finally, the petitioner still has not submitted the evidence the director requested, namely the relevant sections of the constitution and/or bylaws that address membership. Accordingly, the letter from Ms. [REDACTED] is not sufficient to establish that the petitioner has satisfied the plain language requirements of this criterion.

Regarding the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), as stated above, the director noted that the petitioner had not submitted complete, certified translations as required by 8 C.F.R. § 103.2(b)(3). The director further concluded that the petitioner had not established that the articles were about him, relating to his work, or that they appeared in major media. On the Form I-290B, the petitioner asserts that he will demonstrate the importance of the media previously submitted. In the supplemental submission, however, the petitioner no longer asserts that the media he submitted previously is qualifying. Thus, he has abandoned that claim. *See Desravines*, 343 Fed.Appx. at 435. Rather, the petitioner now references evidence relating to his endorsement arrangements in which he would promote the use of a company's product. The petitioner explains: "The endorsements policy varies from one Country to another. In Brazil, only extremely talented and famous artists are eligible for big companies [sic] endorsements." As evidence on appeal, the petitioner provides an email from [REDACTED] Mr. [REDACTED] indicates that the petitioner endorsed the company's products and performed in the company's workshops. Additionally, the petitioner provided promotional materials from several companies that bear the petitioner's image. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) plainly states that the published material "shall include the title, date, and author of the material, and any necessary translation." The submitted evidence lacks all of the elements required by this criterion as the promotional materials submitted on appeal

are not published articles or other material listing an author, title, and date of the published material. The petitioner did not provide documentary evidence that satisfies these required elements.

The director determined that the petitioner submitted evidence that satisfied the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). This evidence consists of a September 8, 2013 letter from [REDACTED]. Within this letter, Ms. [REDACTED] states: “[The petitioner] in 2004 participated as Coaching [sic] in the recordings of the film [REDACTED], a story of a great idol pop brazilian [sic] rock. Teaching to [sic] the actors how to behave as a musician in the filming.” Serving as an instructor or coach does not equate to participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of instructing or coaching performers. There is no evidence on record demonstrating that the petitioner actually served “as a judge of the work of others.” The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). For the reasons outlined above, a review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and, accordingly, we withdraw the director’s favorable determination on this issue.

The petitioner did not claim eligibility under the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) within the initial filing, nor did he claim eligibility under this criterion in response to the director’s request for evidence (RFE), which noted the letters and stated that the petitioner had not asserted a claim under the criterion. The director nevertheless considered the letters in the final decision. On appeal, the petitioner now asserts that he meets eligibility for this criterion and submits two emails to support that assertion. The petitioner further asserts that the director’s concern that the letters were from individuals with whom the petitioner had a personal or professional relationship fails to take into account the music culture in Brazil.

The director did not simply discount the letters based on the relationship between the authors and the petitioner. The director also correctly noted the letters provided little detail and did not explain how the petitioner’s music constitutes contributions of major significance. The record supports the director’s conclusions. Some of the letters are in a foreign language and lack a certified translation as required under 8 C.F.R. § 103.2(b)(3). The remaining letters make general unsupported claims. For example, [REDACTED], a producer in Brazil, asserts that the petitioner is “immensely talented and influential” without providing examples of that influence. USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Moreover, the evidence the petitioner submits on appeal is not persuasive. The petitioner submits two email messages from [REDACTED] a musician, composer and producer; and [REDACTED] a movie producer. Ms. [REDACTED] identifies the petitioner’s original contribution of major significance as performing guitar on a track of an album that won an award. 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 v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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). Ms. [REDACTED] does not explain how the petitioner's performance on this track has influenced his field. Ms. [REDACTED] makes similar assertions, also discussing the petitioner's work on a film with an award winning soundtrack. Again, Ms. [REDACTED] does not provide any examples of how the petitioner's music is influencing the field. Moreover, as the petitioner submitted emails from these individuals instead of signed letters on letterhead and accompanied by supporting evidence of their expertise, the information has limited probative value.

In the same manner, the petitioner did not assert eligibility under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) until he filed the appeal. Accordingly, the director did not err in not addressing this criterion. Nevertheless, the new evidence on appeal is not persuasive. On appeal, the petitioner submits an unsigned letter purportedly from [REDACTED] in which he asserts generally that the band for which the petitioner played guitar is "one of the most famous and important pop/rock bands in Brazilian musical history" and that he "recorded with some of the top artists in Brazil." As the letter is unsigned, it has no probative value.

Regarding the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x), the appeal contains the unsigned letter, purportedly from Mr. [REDACTED] Mr. [REDACTED] biographical information, and documents in a foreign language that the petitioner indicates are the songs that Mr. [REDACTED] wrote and composed. The regulation requires that the petitioner demonstrate his commercial successes through "box office receipts or record, cassette, compact disk, or video sales." The only sales data in the record is data that purportedly derives from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>2</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). As the petitioner does not offer sales data from a reliable source, he has not satisfied the plain language requirements of this criterion.

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<sup>2</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on January 23, 2015, a copy of which is incorporated into the record of proceeding.

### 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.

### 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.<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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> We maintain *de novo* review of all questions of fact and law. *See Soltane*, 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).