



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

JUL 14 2015

FILE #:

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 to classify the beneficiary as an “alien of extraordinary ability” in mechanical engineering, 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 individuals 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 additional documentation. For the reasons discussed below, we agree that the petitioner has not established the beneficiary’s 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 the beneficiary 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 individual’s sustained acclaim and the recognition of the individual’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

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

At the initial filing of the petition, the petitioner asserted that the beneficiary’s eligibility as an “alien of extraordinary ability” was met through comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) that requires “[i]f the above standards [8 C.F.R. § 204.5(h)(3)(i)-(x)] do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.” In addition, the petitioner submitted foreign language documents without

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.

certified English language translations pursuant to the regulation at 8 C.F.R. § 103.2(b) that requires “[a]ny 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.” Although the petitioner submitted a single certified translation, it is unclear which documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) and has no probative value.

The director issued a request for evidence (RFE) and informed the petitioner that it had not established that the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the beneficiary's occupation and how the documentary evidence can be considered comparable to the regulatory categories of evidence. Furthermore, the director indicated that all foreign language documents must be accompanied by full translations that have been certified as complete and accurate, and that the translator has certified that he or she is competent to translate from the foreign language into English.

In response to the director's RFE, the petitioner made no mention of the beneficiary's eligibility based on comparable evidence, nor did the petitioner submit any documentary evidence demonstrating that the regulatory categories of evidence do not readily apply to the beneficiary's occupation and how the documentary evidence can be considered as comparable. Rather, the petitioner asserted that the beneficiary met the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the petitioner did not submit any certified English language translations for the previously submitted foreign language documents.

The director determined that the petitioner did not establish the beneficiary's eligibility for this criterion. On appeal, the petitioner asserts that comparable evidence needs to be considered, and there was published material about the beneficiary in an article in *Moderno Plastico* in February 2009.

Regarding comparable evidence, the regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim “shall” include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. It is clear from the use of the word “shall” in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, the petitioner must explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the beneficiary's occupation as a mechanical engineer cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, regarding this criterion, the petitioner asserts that the beneficiary has had published material about him. An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. Where a beneficiary is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Furthermore, the petitioner submitted advisory opinion statements from Dr. [REDACTED] and Dr. [REDACTED] who indicated that the beneficiary is an "alien of extraordinary ability." A review of the advisory opinions reflects that they were asked by the petitioner to review selected documentary evidence and provide their professional opinions. It does not appear that they were aware of the beneficiary prior to being contacted by the petitioner. Their determination that the beneficiary is an "alien of extraordinary ability" is not based on their prior knowledge of him or his work but merely on the evaluation of the documents given to them by the petitioner.

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 the beneficiary'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 beneficiary'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 does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence. *Cf. Visinscaia v. Beers*, 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).

Regarding the requirements for 8 C.F.R. § 204.5(h)(3)(iii), the regulation requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In general, in order for published material to meet this criterion, it must be about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

A review of the record of proceeding reflects that the petitioner submitted an uncertified and partial translation of a screenshot from [REDACTED] entitled, "[REDACTED]

_____” The document, indicating that it was written by _____ is undated. The screenshot is about a blow molding machine and is not about the beneficiary. In fact, the beneficiary is never mentioned in the article. As such, the petitioner has not submitted published material about the beneficiary relating to his work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the petitioner submitted an uncertified translation of a screenshot from _____ the publisher of _____ indicating that the magazine has a monthly circulation of 14,800. The petitioner submitted evidence of circulation statistics for the magazine but did not submit any documentary evidence regarding the website on which the article appeared; the petitioner did not demonstrate that the article was published in the magazine. Regardless, the petitioner did not submit independent, objective evidence demonstrating that the magazine is a professional or major trade publication. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliant evidence of major media). Regarding _____, in today’s world, many publications, regardless of size and distribution, post at least some of their stories on the Internet, with a potentially global reach. To ignore this reality would be to render the “major media” requirement meaningless. The petitioner did not establish that international accessibility by itself is a realistic indicator of whether a given website is “major media.” The petitioner did not submit any documentary evidence demonstrating that _____ is considered major media. Accordingly, the petitioner did not establish that the article was published in a professional or major trade publication or other major media.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” In this case, the petitioner’s documentary evidence does not reflect published material about the beneficiary relating to his work in professional or major trade publications or other major media.

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

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

A review of the record of proceeding does not reflect that the petitioner asserted the beneficiary’s eligibility for this criterion at the time of the original filing of the petition or in response to the director’s RFE. On appeal, however, the petitioner is now asserting beneficiary’s eligibility for this criterion based on comparable evidence.

Although the petitioner indicates on appeal that comparable evidence should be considered, the petitioner did not explain why the regulation at 8 C.F.R. § 204.5(h)(3)(v) is not readily applicable to the beneficiary’s occupation and how the documentation should be considered comparable to the criterion. For the reasons previously discussed, comparable evidence cannot be considered for this criterion, and

we will determine whether the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) that 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).

On appeal, the petitioner indicates that while the beneficiary was employed at [REDACTED], he was in charge of the main project of creating a three piece lipstick container. The record of proceeding contains an uncertified translation of a letter from [REDACTED] Commercial Director of [REDACTED] who indicated that the project resulted in a joint patent between the beneficiary and [REDACTED]. Mr. [REDACTED] did not provide any further details regarding the significance of the lipstick container invention in the field beyond being issued a patent. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 n. 7, (Assoc. Comm’r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the beneficiary made a contribution of major significance in the field through his development of this idea. In the case here, the petitioner did not establish that his patent or invention has been of major significance in the field.

The petitioner also asserts on appeal that the petitioner was in charge of developing an automatic blow molding machine called [REDACTED] while employed at [REDACTED]. A review of the record of proceeding reflects that that the petitioner submitted uncertified translations of reference letters from employees of [REDACTED] including [REDACTED]. Significantly, all of the letters either contain identical language or virtually the same language when describing the beneficiary’s involvement with the blow molding machine, suggesting the language in the letters is not the authors’ own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge’s adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Nevertheless, the letters offer no evidence, beyond that the first machine was assembled and sold in May 2001, and assertions that the beneficiary’s involvement with the blow molding machine reflects an original contribution of major significance in the field. The letters, for example, do not indicate the impact or influence the machine has had on the field so to demonstrate that it has been of major significance in the field as a whole rather than limited to [REDACTED]. Although the petitioner submitted the blueprints and promotional material for the machine, the petitioner did not submit any documentary evidence reflecting that the machine is considered an original contribution of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Without additional, specific evidence showing that the beneficiary's work has been unusually influential, widely applied throughout the field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that the beneficiary meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that the beneficiary 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 director determined that the petitioner did not establish the beneficiary's eligibility for this criterion. Specifically, the director found that although the beneficiary performed in a leading role for Multipet and for the petitioner, the petitioner did not demonstrate that they have a distinguished reputation. Although we will ultimately uphold the director's finding that the petitioner did not establish the beneficiary's eligibility for this criterion, we will withdraw the director's finding that the beneficiary performed in a leading role for Multipet and the petitioner.

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 beneficiary contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

On appeal, the petitioner asserts that the beneficiary meets this criterion based on his employment with the petitioner. The petitioner indicates that as the chief engineer, the beneficiary was in charge of the entire manufacturing process and overseeing all departments and personnel. The petitioner further asserts that when the beneficiary was employed by the petitioner, the company had launched three new products to the market resulting in the tripling of the company's revenues and increased the company's existing lines. The petitioner, however, does not address the director's issue regarding the distinguished reputation of Multipet or the petitioner. Therefore, this issue is abandoned. *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) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

A review of the record of proceeding reflects that at the initial filing of the petition on July 9, 2009, the petitioner submitted a letter asserting that the beneficiary was responsible for launching three new products to the market "which will triple our revenues as well as increase output of our existing line." In addition, the petitioner asserted that the beneficiary added nine new employees to the company, and the company increased its sales by 31% and net profit by 77%. The petitioner, however, submitted no documentary evidence, including marketing reports, to support its assertions. In fact, the petitioner did not submit any evidence, such as an organizational chart or paystubs, supporting its assertion that it had employed the beneficiary, in any capacity. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter*

of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

For these reasons, the petitioner has not established that the beneficiary has performed in a leading or critical role for the organization. Moreover, although the petitioner did not address the issue regarding its distinguished reputation, a review of the record of proceeding reflects that the petitioner submitted screenshots from its website reflecting advertisements of various firearms. The screenshots, however, provide no evidence that the petitioner enjoys a distinguished reputation.

Regarding [REDACTED] as previously discussed, the petitioner submitted several uncertified translations of letters reflecting identical language that have no evidentiary weight. Furthermore, the letters simply indicate that the beneficiary invented the blow molding machine. The letters do not indicate the beneficiary's duties and responsibilities while employed by [REDACTED] so as to demonstrate that the beneficiary performed in a leading or critical role. The lack of detailed information does not establish that the beneficiary's role was either leading or critical at [REDACTED]. Moreover, the record of proceeding contains screenshots from [REDACTED] website reflecting a general overview of the company but offers no evidence of its distinguished reputation. In addition, the petitioner did not submit any other documentation establishing that the [REDACTED] has a distinguished reputation.

Accordingly, the petitioner did not establish that the beneficiary 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 did not establish 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."

In response to the director's RFE, the petitioner submitted a copy of the beneficiary's 2013 W-2 from [REDACTED] reflecting \$139,608.02 in wages. In addition, the petitioner submitted the beneficiary's paystub, dated September 19, 2014, reflecting employment by [REDACTED]. The director found that the documentary evidence postdated the filing of the petition and could not be considered. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175

(Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. In addition, the director found that the petitioner did not submit any documentary evidence that compared the beneficiary's salary to others in his field, so as to demonstrate that the beneficiary commanded a high salary.

On appeal, the petitioner submits screenshots from www.bls.gov reflecting that the mean annual wage for mechanical engineers in 2013 was \$85,930 and the 90th percentile earns \$123,340. Again, the petition was filed on July 9, 2009, and earnings that postdate the filing of the petition cannot be considered to establish the beneficiary's eligibility. The petitioner also submits screenshots from [REDACTED] reflecting that the average starting salary for mechanical engineers in 2009 was \$66,158. According to part six on the Immigrant Petition for Alien Worker (Form I-140), the petitioner indicated that the beneficiary's wages per week were \$2,675. The petitioner, however, did not submit any documentary evidence regarding the beneficiary's salary in 2009. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). As the petitioner submits evidence of salaries in 2009, the petitioner must submit evidence of his salary in 2009. Again, the petitioner previously submitted evidence of the beneficiary's salary from 2013 and 2014. Moreover, the screenshots only reflect average salaries and do not identify the high end salaries for those performing work with similar responsibilities as the beneficiary. The plain language of the regulation requires the petitioner to establish the beneficiary's salary is high when compared to others in the field. As such, average statistics do not meet this requirement. Furthermore, the petitioner did not establish that the beneficiary's employment with [REDACTED] is in the mechanical engineering field; the petitioner did not submit any documentary evidence, such as a job letter confirming the beneficiary's position, reflecting that the beneficiary was employed by [REDACTED] as a mechanical engineer.

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 the beneficiary's 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).

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

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

A review of the record of proceeding does not reflect that the petitioner asserted the beneficiary's eligibility for this criterion at the time of the original filing of the petition or in response to the director's RFE. On appeal, however, the petitioner is now asserting beneficiary's eligibility for this criterion based on comparable evidence.

On appeal, the petitioner asserts that it "has enjoyed commercial success when looking at the success of [the beneficiary's] developments, which are similar to counting tickets sold or box office earnings." The petitioner references its previously discussed letter in which it asserted that the company increased sales by 31% and net profits by 77% in 2008, and the petitioner asserts that the beneficiary's three piece lipstick container was so successful it is still used today.

For the reasons previously discussed, the petitioner has not established that the beneficiary meets the requirements for comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Moreover, the petitioner did not submit any documentary evidence to support its assertions regarding its sales and profits. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The beneficiary is not a performing artist; rather the beneficiary is a mechanical engineer. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. As the beneficiary's occupation is not "in the performing arts," the petitioner's evidence does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

Accordingly, the petitioner did not establish that the beneficiary 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.

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.²

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. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

² 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).