



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUN 24 2015**

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted]

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](http://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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director granted the petitioner's subsequent motion to reopen and reconsider, and affirmed the denial of the petition. The petitioner appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner<sup>1</sup> seeks classification as an alien of extraordinary ability as an actor and performer, 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 petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. In his August 8, 2014 decision, 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. In his October 24, 2014 decision, granting the petitioner's motion to reopen and reconsider, the director again determined that the petitioner had not shown his eligibility for the classification.

On appeal, the petitioner asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii) and (viii). For the reasons discussed below, we agree with the director 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

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<sup>1</sup> The evidence in the record indicates that in addition to his legal name, the petitioner also uses the names " [REDACTED] " and " [REDACTED] ."

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 his sustained acclaim and the recognition of his 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 he 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. P-3 Nonimmigrant Visa

As noted by the petitioner, the record shows that USCIS has granted at least one P-3 nonimmigrant visa in his behalf. The regulation at 8 C.F.R. § 214.2(p)(6) provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

A grant of a P-3 nonimmigrant visa indicates that the beneficiary, while in the United States, will be involved in a “unique or traditional . . . performance or presentation.” To be eligible for the immigrant classification sought in the instant petition, however, the regulation requires a showing of the petitioner’s extraordinary ability, which is defined as “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.” 8 C.F.R. § 204.5(h)(2). The petitioner’s extraordinary ability is not a consideration for a grant of a P-3 nonimmigrant visa. As such, the petitioner’s approval for the nonimmigrant visa is not evidence of his eligibility for the immigrant visa under the classification of an alien of extraordinary ability. See 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

#### B. Evidentiary Criteria<sup>2</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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

On appeal, the petitioner asserts that he meets this criterion because he received a [REDACTED] in 2002. The evidence in the record does not support this assertion.

On appeal, the petitioner asserts that “[t]he [REDACTED] Awards are the most prestigious in the world of South African theatre, period.” In support of this statement, the petitioner points to a one-page Google search printout, which the petitioner submitted in support of his motion before the director, indicating that a search of all of the following words: “[REDACTED]” and

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<sup>2</sup> 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.

“award,” without quotes around the complete phrase, has “about 1,230,000 results.” The petitioner has not demonstrated the recognition of the award either in or outside of South Africa through the Google search printout. The petitioner has not shown that the search results, which include all results with these words rather than the phrase, all relate to the award that the petitioner received in 2002. For example, the first search result listed on the printout is entitled “[REDACTED].” It appears that this search result relates to a publisher named “[REDACTED]” and does not relate to the petitioner’s award. The second and third listed search results appear to relate to craft publications published in 1997 and 2000, respectively. These search results do not indicate that they relate to the petitioner’s award. The petitioner has submitted no evidence demonstrating that any of the Google search results relate to his award or establish that his award is recognized nationally or internationally. Going on record that the award is “the most prestigious in the world of South African theatre” without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Moreover, as noted in the director’s August 8, 2014 decision, the petitioner’s award appears to be local or regional in nature. Specifically, the award certificate indicates that the petitioner received a [REDACTED] Award for best performance by a new actor in the musical [REDACTED]. On appeal, the petitioner asserts that the award’s level of recognition is a different concept from the pool of eligible candidates and that the name is not determinative. While we do not contest either point, it is the petitioner’s burden to demonstrate the national or international recognition of the award. The petitioner has not shown that this award, which includes the name of a city and the word “regional,” is nationally or internationally recognized, such as through a national telecast or national media attention.

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

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

On appeal, the petitioner asserts that he meets this criterion. The petitioner has submitted a number of published materials. The petitioner, however, has not shown that he meets this criterion.

The record includes materials that focus on musical productions, including [REDACTED] and [REDACTED] in which the petitioner has been involved. Most of these materials either do not mention the petitioner, or they list the petitioner as one of the multiple cast members in the musical productions. These materials do not focus on the petitioner. They are therefore not about the petitioner, relating to his work as an actor or performer.

For example, the petitioner has submitted a 2001 article entitled “ [REDACTED] posted on [REDACTED]. The article has 10 paragraphs and mentions the petitioner’s name three times. As its title suggests, the article is about the musical [REDACTED], in which the petitioner portrayed one of the characters. This article, similar to other materials in the record, is about the musical production in which the petitioner is involved. Similarly, although the [REDACTED] 2013 article “[REDACTED]” posted on [REDACTED] website, [REDACTED] mentions the petitioner’s name and notes that the petitioner is from South Africa and has been with [REDACTED] for 11 years, the focus of the article, as its title suggest, is the musical production [REDACTED]. The article is about the musical production and the technical difficulties in bringing it to venues like the [REDACTED] not about the petitioner, who is one of many cast members in the production. In short, these materials, including those not specifically mentioned, are about the musical productions and do not demonstrate that the petitioner meets the plain language requirements of this criterion. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ 2008 WL 10697512, at \*3 (D. Nev. 2008) (upholding a finding that articles about a show are not about the actor).

In addition, the petitioner has not shown that either article is published in a professional or major trade publication or other major media. In response to the director’s request for evidence (RFE), the petitioner submitted a document entitled “[REDACTED]” noting that [REDACTED] with a daily circulation of 174,073 and a Sunday circulation of 232,334, is ranked 58th in the United States in 2007. The petitioner did not provide any data suggesting that the newspaper has a significant distribution outside of Tennessee. The petitioner also submitted evidence showing that [REDACTED] has received awards for its news reporting. The petitioner has also not submitted evidence showing that a newspaper with a daily circulation that is less than one tenth of the daily circulation of the top two newspapers in the United States and that is ranked 58th in the United States constitutes major media.<sup>3</sup> Also, the petitioner has submitted insufficient evidence showing that [REDACTED] receipt of awards is indicative of its status as major media. Similarly, the petitioner has submitted insufficient evidence showing that [REDACTED], which posted “[REDACTED]” is a professional or major trade publication or other major media. While the petitioner asserts on appeal that the initial submission included evidence of the web traffic statistics for the relevant websites, the record does not contain these statistics for [REDACTED].

Moreover, although the petitioner has submitted materials that are about him, relating to his work as an actor and performer, the petitioner has not shown that these materials are published in professional or major trade publications or other major media. For example, the petitioner has submitted an [REDACTED] 2013 article entitled “Q & A with [the Petitioner] of [REDACTED]” which is posted on [REDACTED] blog, [REDACTED].

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<sup>3</sup> According to the “[REDACTED],” [REDACTED]’s daily circulation is 2,278,022 and *The [REDACTED]* daily circulation is 2,062,312.

According to [REDACTED] website, it is a performance venue in [REDACTED] Wisconsin. The petitioner has not shown that this blog is a professional or major trade publication or other major media. The petitioner has submitted a one-paragraph piece entitled “[REDACTED],” posted on [REDACTED] website. The petitioner has not shown that materials posted on a school website constitute published materials in a professional or major trade publication or other major media.

Accordingly, the petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

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

On appeal, relying primarily on reference letters, the petitioner asserts that he meets this criterion. To meet this criterion, the petitioner must demonstrate that his contributions are both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). The petitioner must show that his contributions are original, such that he is the first person or one of the first people to have done the work in the field, and that his contributions are of major significance in the field, such that his work fundamentally changed or significantly advance the field as a whole. In addition, contributions of major significance connotes that the petitioner’s work has already significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134-36. The evidence in the record is insufficient to demonstrate that the petitioner meets this criterion.

First, the [REDACTED] 2013 Citation of Congratulations presented by the [REDACTED], which “extends to [the petitioner] a sincere welcome,” does not meet this criterion. Although the Citation notes that the petitioner is one of the cast members in a concert entitled “[REDACTED]” the citation does not indicate that the petitioner has made any original contributions of major significance in the field of acting or performance. The petitioner has submitted an undated letter from [REDACTED], [REDACTED] in Oklahoma, which states that the petitioner has made an “outstanding contribution . . . to the city of [REDACTED] and the State of Oklahoma” and has made “an extraordinary impact on [the] communities and to [the United States].” The plain language of the criterion requires the petitioner to demonstrate his contribution in the field of acting and performance, the field in which he seeks the exclusive classification. The letter from [REDACTED] does not provide information relating to the petitioner’s contribution in the field.

Second, reference letters and articles that praise the petitioner’s talent, without providing specific evidence on what the petitioner has done in the field that is original and that constitutes original contributions of major significance, do not demonstrate that the petitioner meets this criterion. According to a [REDACTED] 2014 article entitled “[REDACTED],” posted on a blog, the petitioner is the first voice one would hear from [REDACTED]

soundtrack, and that “his smooth yet dynamic vocal style, and his heartfelt lyrics . . . is some of the best world music [the blogger has] ever heard.” To meet this criterion, the petitioner must demonstrate the impact his work has had in the field rises to the level of major significance in the field. The [REDACTED] 2014 article does not discuss what impact the petitioner’s work has had in the field of acting and performing. Rather, the article constitutes the opinion of one blogger who has worked with the petitioner and who praises the petitioner’s musical talent. The article is insufficient to demonstrate that the petitioner’s impacted the field is consistent with contributions of major significance.

According to a May 26, 2014 letter from [REDACTED] Director of [REDACTED] a performing arts company, the petitioner performed in [REDACTED] two musical productions that the company produced and that have received “great reception in Europe and South Africa.” Ms. [REDACTED] states that “[b]ecause of people like [the petitioner, the company] saw [a] rise in ticket sales as well as recognition.” The letter does not establish that the petitioner has made original contributions of major significance in the field of acting and performance. Rather, the letter provides information about the petitioner’s work in musical productions and praises, in general terms, the petitioner’s talent and character. Such information is insufficient to demonstrate that the petitioner meets this criterion.

According to a May 8, 2013 letter from [REDACTED] Artistic Director of [REDACTED], a performing arts company, the petitioner assisted Mr. [REDACTED] during casting of a musical production. Specifically, Mr. [REDACTED] states that the petitioner “did an exceptional job as an adjudicator for the musical and that enabled [the company] to hire the strongest cast every director desire for.” Although Mr. [REDACTED] praises the petitioner’s talent in performance and ability in casting, Mr. [REDACTED] does not indicate what the petitioner has done that constitutes original contributions of major significance in the field of acting or performance.

Third, reference letters discussing the petitioner’s contributions to [REDACTED] the movie and the musical production, without providing evidence of the petitioner’s original contributions of major significance in the field of acting and performance do not meet this criterion. The petitioner has submitted a number of reference letters attesting to his contribution to [REDACTED] movie and to [REDACTED] musical production. Specifically, the petitioner has submitted a July 12, 2013 letter from [REDACTED], a composer and singer; a July 25, 2013 letter from [REDACTED] President of [REDACTED] and a July 15, 2013 letter from [REDACTED] Director of musical production [REDACTED]. The reference letters all praise the petitioner’s musical and acting talent and indicate that he’s vocal performance has contributed to the success of [REDACTED] movie and his vocal and acting performance have contributed to the success of [REDACTED] musical production. The petitioner, however, has not shown that his contributions in the movie and musical production have impacted the field of acting and performing as a whole, as required by the plain language of the criterion. The petitioner’s contributions in the movie and musical production, as discussed below, demonstrate that he meets the leading and critical role criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii). It does not demonstrate that he also meets the original contributions of major

significance in the field criterion, without specific evidence and examples of his work's impact in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).

Fourth, evidence that the petitioner has released recordings of his musical performances, performed in benefit concerts and donated to the [REDACTED] shows that the petitioner has been employed in the field of acting and performance and has been charitable to others. Such evidence, however, does not demonstrate that he has made original contributions of major significance in the field of acting and performance.

Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.<sup>4</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the petitioner's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

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

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*  
8 C.F.R. § 204.5(h)(3)(vii).

The director found that the petitioner met this criterion. The record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345

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<sup>4</sup> In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The plain language of the criterion suggests that it is limited to evidence relating to the visual arts. This interpretation is longstanding and has been upheld by a federal district court. *See Negro-Plumpe*, 2008 WL 10697512, at \*4 (upholding an interpretation that performances by a performing artist do not fall under the regulation at 8 C.F.R. § 204.5(h)(3)(vii)). In this case, the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases. Accordingly, the petitioner has not presented evidence of the display of his work in the field at artistic exhibitions or showcases. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

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

The director found that the petitioner met this criterion. The evidence in the record supports this finding. For example, according to Ms. [REDACTED] the petitioner is “one of [the] few South African cast members in [REDACTED] in the United States, he is proficient in Zulu, Xhosa and Sotho, languages that are used in some of the chants in the production. His unique style and voice contributes to the authentic rhythms and cultural traditions of South Africa that are prevalent in this production.” In addition, the petitioner has submitted evidence showing that the musical production team has received a number of awards, including a Grammy Award and Tony Awards. Accordingly, the petitioner has presented evidence that he has performed in a critical role for an organization or establishment that has a distinguished reputation. The petitioner meets this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

In his August 8, 2014 decision, the director found that the petitioner did not meet this criterion. On appeal, the petitioner has not specifically challenged the director’s finding. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

### C. Summary

The evidence demonstrates that the petitioner has been employed as a vocalist, actor and performer and has been an ensemble cast member in the musical production [REDACTED]. Notwithstanding evidence showing that the petitioner is a working performer who has been gainfully employed, 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 petitioner has achieved sustained national or international acclaim and is one of the small percentage who have 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 on which the petitioner relies on appeal in the aggregate supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.<sup>5</sup>

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>5</sup> We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).