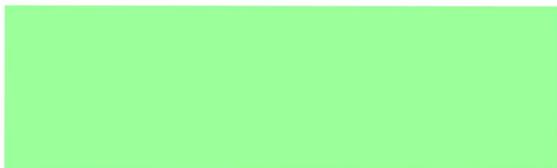


(b)(6)

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

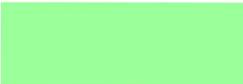


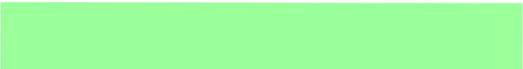
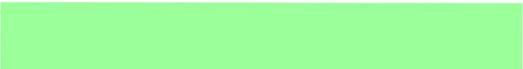
U.S. Citizenship
and Immigration
Services



DATE: **MAR 02 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 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 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 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

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

II. ANALYSIS

A. Evidentiary Criteria¹

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

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

The director determined that the petitioner did not meet the requirements of this criterion. On appeal, the petitioner asserts that the [REDACTED] and the [REDACTED] are sufficient to satisfy this criterion's requirements.

Regarding the [REDACTED] the petitioner provides a May 28, 2013 letter from [REDACTED] Executive Director for the [REDACTED]. This entity issued the award in question. Ms. [REDACTED] confirms within the letter that in 2011 that her organization nominated the petitioner for Outstanding Performance by a Male in a Principal Role for his role in a play, [REDACTED]. Receiving an award nomination is insufficient to meet this criterion's requirements as the regulation states the petitioner must receive the actual award.

Ms. [REDACTED] also indicated that the petitioner was one of four playwrights of [REDACTED], which received four awards. Ms. [REDACTED] lists three recipients other than the petitioner for Outstanding Set Design, Outstanding Costume Design and Outstanding Lighting Design. Ms. [REDACTED] does not list the recipient of the Outstanding Production Award. Accordingly, her letter is not probative of the petitioner's receipt of an award.

Moreover, a letter and a list of nominees from the festival is not primary evidence of the award, which would be a copy of the award or a photograph of the achievement. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Furthermore, the petitioner has not provided evidence for the record establishing that the awards relate to the petitioner's performance as a playwright. The awards for [REDACTED] were for outstanding production, set design, costume design, and lighting design. Although, the petitioner claims to have received this award, a more accurate representation is that he was a member of an award-winning performance. He has not established that he was the actual recipient of this award. As the petitioner has not submitted evidence that he is was a named recipient of any of the awards for [REDACTED] based on his work as a playwright, he has not established that the [REDACTED] can serve to meet this criterion.

Even if he had submitted evidence that he received this award, the record lacks documentary evidence that this award is nationally or internationally recognized. The only form of evidence that presents this assertion is Ms. [REDACTED] letter in which she states: "Both Awards [REDACTED] are, without a doubt, nationally and internationally recognized theatrical awards for outstanding achievements in the performing arts." Ms. [REDACTED] assertion is not corroborated with any documentary evidence on record. While we recognize that the [REDACTED] are recognition for local performances, that receive national and international recognition within the field, the record lacks evidence corroborating Ms. [REDACTED] claims that the [REDACTED] is commensurate with the [REDACTED]. National and international recognition results, not from the entity that issued the prize or the award, but through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition can occur through specific means; for example, through media coverage. A national or international level competition may issue lesser awards that merely receive local or regional recognition, which do not meet the plain language requirements of this criterion.

Additionally, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

Regarding the [REDACTED] the director determined that this achievement was not tantamount to a prize or award as it is financial support for individual actors. The director further determined that the petitioner did not submit evidence to establish that this fellowship is recognized beyond the issuing entity. On appeal, the petitioner asserts that this fellowship "is an internationally recognized award. The money given for this award is indeed the prize. Based on the evidence provided in my material, I dispute that I have not met the criterion as stated" in the regulation. The petitioner resubmits the same press release he provided in response to the RFE. This press release characterizes the achievement as a fellowship rather than a prize or award. The press release states:

[REDACTED]

The press release states that the fellowship is designed for the recipient's artistic development. "Artistic development" is not a field of endeavor, but training for a future field of endeavor. As such, fellowships and financial aid achievements generally cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Therefore, the petitioner did not establish that this fellowship is a nationally or internationally recognized prize or award for excellence in the field. Moreover, the petitioner did not submit any documentary evidence beyond the awarding entity to demonstrate that the fellowship is recognized nationally or internationally for excellence in the field of endeavor.

The petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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.

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, to include material from the [REDACTED] and [REDACTED] to establish that he meets this criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner did not establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned his claims under this criterion. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The petitioner provided two plays that he wrote; each play is contained within a book. He initially claimed this evidence as comparable evidence, while also listing it as "[REDACTED]". The director determined that the petitioner did not meet the requirements of this criterion as the evidence was not sufficient to demonstrate that "[REDACTED]" is a form of major media. We will evaluate the petitioner's works both as a direct claim and as comparable evidence.

Considering the petitioner's authorship of two plays directly under this criterion, he provided evidence that "[REDACTED]" published two of his plays in two books. There are several factors relevant to the petitioner's representations. First, we will determine if "[REDACTED]" is a form of major media as the petitioner claims on appeal. The evidence the petitioner provided in response to the RFE originates from the publisher and is not accompanied by independent, corroborating evidence. This evidence reflects that its list of published playwrights "stretches from [REDACTED]". However, as the petitioner did not provide evidence to corroborate this assertion from the publisher, such as circulation or distribution statistics, it will not serve to establish that "[REDACTED]" constitutes a form of major media.

The petitioner also provides evidence relating to "[REDACTED]" being a member of numerous organizations. That the "[REDACTED]" is a member of these organizations does not establish that it constitutes a form of major media. The petitioner also asserts that since the "[REDACTED]" recognizes "[REDACTED]" and since plays published by "[REDACTED]" have garnered several awards, that this demonstrates that the organization is a form of major media. The petitioner's position is not persuasive. While this information may demonstrate that "[REDACTED]" enjoys a distinguished reputation, and while this organization may publish award-winning plays, this overall reputation does not impute national or international recognition to the publications in which the petitioner's plays appeared. The petitioner has not submitted evidence demonstrating that the two books in which his plays appeared constitute a form of major media.

Second, the petitioner did not submit evidence to establish the manner in which his plays constitute scholarly articles. For nonacademic fields, a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. Consequently, the petitioner's claim is not persuasive that his play published in a book for the general public is a scholarly article. Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "scholarly articles." An article is "a nonfictional prose composition usually forming an independent part of a publication (as a magazine)."³ The petitioner has not explained how a play, a script for a performance piece, constitutes an article.

Considering the petitioner's authorship of two plays as comparable evidence, several of the criteria are written broadly such that they can readily apply to the greatest number of occupations. 56 Fed. Reg. 60897-01, 60898. The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation and states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." Therefore, in order to properly claim comparable evidence, the petitioner must demonstrate that the criterion does not readily apply and that the evidence is, in fact, comparable. The petitioner has not claimed or demonstrated that there are no scholarly publications relating to playwriting. Therefore, the petitioner may not rely on comparable evidence under this criterion. Moreover, as discussed above, the petitioner has not demonstrated the significance of the publication that included his play such that it is comparable to a scholarly article in a professional or major trade publication or other major media.

The petitioner has not submitted evidence that meets the plain language requirements of this criterion. He has also not demonstrated that he may rely on comparable evidence or that he has submitted evidence that is comparable.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director determined the petitioner met the requirements of this criterion. The record, including but not limited to evidence of starring roles in critically acclaimed shows performed at distinguished festivals, supports this determination.

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.

³ See <http://www.merriam-webster.com/dictionary/article>, accessed on January 13, 2015, and incorporated into the record of proceeding.

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.⁶

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.

⁶ 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).