



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF H-S-

DATE: SEPT. 11, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an individual who works in the field of business development and commercialization, seeks classification as a person "of extraordinary ability" in business. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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.

I. LAW

Section 203(b) of the Act states in pertinent part:

(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.

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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. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth two different methods by which a petitioner can demonstrate extraordinary ability sustained by national or international acclaim and the recognition of the petitioner’s achievement in the field. First, a petitioner can submit evidence of a one-time achievement (that is, a major, internationally recognized award). Second, a petitioner can submit 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 our 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 we 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 U.S. Citizenship and Immigration Services (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

The Petitioner indicates he has extraordinary ability in the field of business development and commercialization. On appeal, he states he has demonstrated his extraordinary ability by submitting evidence that meets nine of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that a petitioner is the recipient of the prizes or the awards. The Petitioner provided evidence regarding the following four awards:

- Most Innovative Access Device (awarded to [REDACTED]);
- UK’s Most Innovative Mobile Company Award (awarded to [REDACTED]);
- Young Turks Innovation Award (awarded to [REDACTED]); and
- Asia Pacific Mobile Learning Initiatives Recognition 2012 (awarded to [REDACTED])

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.

The Director determined that the evidence the Petitioner provided regarding these awards did not meet the regulatory criteria because it did not establish that the Petitioner received the awards, that the awards related to excellence in the Petitioner's field, or that the awards are nationally or internationally recognized.

On appeal, the Petitioner maintains that the evidence he provided regarding these awards does in fact meet the regulatory requirements. The Petitioner states that, although the awards went to [REDACTED] and [REDACTED] he is responsible for their achievements because he was a regional CEO of both companies and, therefore, was the lead person responsible for all the business they had done leading up to the awards. He notes that the Director accepted that he performed in a leading or critical role for the companies under a separate criterion. He also emphasizes the news coverage and prestige surrounding the awards.

While the separate criterion at 8 C.F.R. § 204.5(h)(3)(viii) looks at the role the Petitioner performed for an organization or establishment, the relevant regulatory language for this criterion requires evidence of the Petitioner's "receipt" of qualifying awards or prizes. For each of the awards listed by the Petitioner, the award was given to the company for which he worked, not to the Petitioner himself. While the Petitioner may have been instrumental to the success of the companies, it remains that he is not the recipient of the award.

Even if we in principle allowed the Petitioner to rely on awards his employers received, the Petitioner is not the founder of those companies and he has not provided persuasive evidence that he was responsible for the recognized achievements. The Petitioner's asserts that crediting him with the achievements of [REDACTED] and [REDACTED] is "self explanatory as he was the CEO Asia for both the companies.". Without documentary evidence to support his claim, however, the assertions of the Petitioner will not satisfy his burden of proof. *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)).

The Petitioner provided a letter from [REDACTED] CEO and founder, [REDACTED] indicating that [REDACTED] a United Kingdom company with business operations in Canada, was founded in [REDACTED]. [REDACTED] hired the Petitioner in February of 2006 as the company's head of operations in Asia. Regarding the Petitioner's involvement with the company's award-winning devices, [REDACTED] stated that the Petitioner appointed Indian distributors and successfully participated in [REDACTED] 2006. He also soft launched the [REDACTED] in the Asian market. [REDACTED] further stated that the Petitioner finalized a data deal with [REDACTED] in India for an extremely low price, which helped the company get a deal with [REDACTED]

Although [REDACTED] stated that the Petitioner performed important work for [REDACTED], the description of the Petitioner's role does not indicate that the above awards recognized the Petitioner's work. For example, the Petitioner headed the [REDACTED] soft-launch in 2006, less than one year after his initial hiring and there is no evidence that he is a listed inventor on the patents underlying this innovation. This information suggests that the Petitioner had little, if any, involvement in the product's initial development.

The Petitioner provided a similar letter from [REDACTED] the president and CEO of [REDACTED], headquartered in California. [REDACTED] indicated that the Petitioner joined the company in 2011 as CEO Asia and “played a vital role in launching a new product line to market a Productivity Suite of Android Apps.” In addition, the Petitioner signed deals with more than a dozen leading companies. As with [REDACTED] the evidence does not reflect that the Petitioner was involved with the development of the product that served as the basis for the award. Although [REDACTED] letter confirms the Petitioner was instrumental in securing data coverage and distribution deals, the record does not contain evidence to demonstrate that this work was the basis for the award.

In addition, the regulatory language requires that the awards or prizes were given for “excellence in the field of endeavor.” The Petitioner has identified his field of endeavor as business development and commercialization. Given the information about the awards in the record, however, the Petitioner has not established that each of the above awards was given for excellence in those areas rather than for the technology and development of company products.

Regarding the Most Innovative Access Device awarded to [REDACTED] the Petitioner provided an article from an unidentified source entitled, “[REDACTED]” [REDACTED] The article described the awards ceremony as follows: “These [REDACTED] will identify and recognize outstanding contributions to the field of communications, ICTs, multimedia and infrastructure, offering well-deserved congratulations to companies which have shown outstanding research, development and innovations in the ICT sector.” It further stated that [REDACTED] was awarded the [REDACTED] to recognize the company’s breakthrough web delivery platform, describing the “unique technology [that] reduces bandwidth consumption.” According to the article, the underlying technology is the subject of several international patents. The record does not indicate that the Petitioner is a listed inventor on any patent. In light of the above, the technological and engineering aspect of the company’s accomplishments served as the basis for its award.

In 2011, [REDACTED] was also awarded the [REDACTED] as [REDACTED] according to an [REDACTED] article. An article from [REDACTED] reveals it similarly won the UK’s [REDACTED] for “developing and manufacturing the [REDACTED] – [REDACTED] that retails for just [REDACTED]” Each of these articles confirms that [REDACTED] received awards for the invention of its revolutionary product, not for work in the area of business development and commercialization.

Finally, [REDACTED] explained in its May 5, 2012, letter congratulating [REDACTED] that the Asia Pacific Mobile Learning Initiatives Recognition “is given to an organization or institution that has taken steps to provide mobile learning.” Even assuming this award includes recognition for business development and communications strategies, the Petitioner has not

² The source of the article is not provided.

established that this award is nationally or internationally recognized. The Petitioner submitted a list of prior awardees and keynote speakers at the event. This information does not demonstrate the recognition of the specific honor [REDACTED] received beyond the awarding entity. The Petitioner did not submit any media coverage in the trade or general media. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

To satisfy this criterion, a petitioner must first document that he is a member of an association in his field. Second, a petitioner must demonstrate: (1) that outstanding achievements in his field are a requirement for membership in the association, and (2) that nationally or internationally recognized experts are the one to make the determination of outstanding achievements. The Petitioner provided evidence that he served as a Working Committee Member of the [REDACTED] from 2004-06 and [REDACTED] and [REDACTED] from 2007-2009. The Director determined that the documentation of record did not meet the requirements of this criterion because it did not reflect that outstanding achievement is a requirement for membership in the association, or that such achievement was judged by nationally or internationally recognized experts in the field. On appeal, the Petitioner emphasizes the prestige of being selected first as a Working Committee Member and then as a [REDACTED]. He does not specifically address the above-mentioned concerns the Director articulated.

The association in which the Petitioner served in a leadership position, [REDACTED] is a business trade organization with 2,300 members, which works to facilitate business partnerships between Indian and foreign companies. According to the Petitioner, all hardware and software companies are members of [REDACTED]. Included in the record is an [REDACTED] document entitled "Rules for Election to Members of Committee of Administration & Office Bearers and Regional Chairmen." The document indicates that, to be eligible for election, the candidate must be a member. Members must have been associate members for at least three consecutive years and represent an entity with specific average annual exports.

The Petitioner has not established that a number of years of associate membership and the level of average annual exports required are outstanding achievements. While the Petitioner has performed a leading role for [REDACTED] he has not shown that his roles were a separate level of membership within [REDACTED] for which [REDACTED] requires outstanding achievements. Regardless, the document further states that full members of the committee select the higher leadership of the association by vote. The Petitioner did not provide evidence that the full membership consists of nationally or internationally recognized experts in the field, or that full members must vote in accordance with whom they judge to have outstanding achievements in the field. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

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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.

To qualify, the published material must be about the petitioner and specifically relating to the petitioner's work in his or her stated field of extraordinary ability. The Petitioner provided numerous articles regarding the mobile communications industry and the work of [REDACTED] and other companies. The Director determined that the Petitioner did not meet the requirements of this criterion because, among other things, the articles provided are not about the Petitioner.

On appeal, the Petitioner states that, because he is a business developing expert, "any articles published about him are in reference to product news creating disruptions in existing technologies and references by other Industry stalwarts as expert comments about the upcoming technologies." The Petitioner specifically references an article from [REDACTED] entitled, [REDACTED] in which he is twice quoted regarding [REDACTED]. He further summarizes the article by stating:

The article in this Weekly talks about the future of Data-centric converged devices which were new at the time but are evolving now as a result of all the tech seeding in those years. [My] actual work is to position the newly developed innovative product as a solution to the existing problems of the customers.

The Petitioner seeks to consider articles regarding the mobile device market and [REDACTED] product development as material about himself. Although Petitioner's work in the field of business development and commercialization has occurred primarily within the mobile communications industry, an article about the mobile communications industry is not one about the Petitioner, relating to his work in the field. In the submitted article from [REDACTED] for example, the products of several different companies are referenced and Nokia, Sony Ericsson, Motorola, HP, BlackBerry, Palm and O2 are identified as the leading players. Although the Petitioner is quoted in the article, his cited statements are about [REDACTED]. The article is not about the Petitioner and his work, but about the market and developments in the mobile communications industry.

The Petitioner provided additional articles, some of which are more specifically about [REDACTED] and its [REDACTED]. Although the Petitioner performed work for [REDACTED] relating to the [REDACTED] articles about the company and its products are not necessarily about the Petitioner, relating to his area of expertise. The articles focus on [REDACTED] products and their revolutionary nature, not on the Petitioner's role in the business development and commercialization for the company. Finally, the record includes articles about trends in information technology, which quote the Petitioner as a member of [REDACTED]. These articles are also not about the Petitioner, relating to his work. As a result, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The Petitioner provided evidence that he served as the chief guest at [REDACTED]. The Director determined that the Petitioner did not meet the requirements of this criterion because he did not show he served as a judge. On appeal, the Petitioner asserts that his primary role as chief guest to [REDACTED] was "to inaugurate this function and judge the participants in the field of technology innovation and motivate them to pursue their dreams."

According to the evidence provided, [REDACTED] was a one-day IT fest held at [REDACTED]. As evidence regarding his participation in the event, the Petitioner provided an advertisement for the event, an article about the event, and emails from event organizers. The emails from [REDACTED] confirm that the Petitioner served as a judge of the various competitions. Given the Petitioner's focus on the development and commercialization of technology, the record is persuasive that he was judging the work of others in an allied field. Accordingly, the Petitioner has satisfied this criterion.

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

The evidence must establish that the contributions are not only original, but rise to the level of major significance in the field as a whole. To constitute a contribution of major significance, the petitioner's work must have significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136. The Petitioner originally provided five letters of support, including letters from the CEO of [REDACTED], the CEO of [REDACTED], and the Executive Director of [REDACTED]. All of these letters praise the Petitioner's work and discuss how he was instrumental to the success of the companies and the association.

The Director determined that the Petitioner did not meet the requirements of this criterion because, although he demonstrated the significance of his work to the companies and associations with which he worked, he did not show the significance of his work to the field of business development and commercialization. On appeal, the Petitioner emphasizes the importance of the deals he brokered for [REDACTED] and the impact of [REDACTED] tablet launch. His brief states: "Even the deals done today are based on the relationships developed by [the Petitioner] His skills ha[ve] made [REDACTED] a trend setter for low cost Internet mobile devices i.e., the low cost tablets which [are] impacting millions [of] poor people worldwide."

Although the Petitioner has demonstrated that he significantly contributed to the success of [REDACTED], he has not articulated how his work has impacted the field of business development and commercialization as a whole. The Petitioner indicates that he brokered deals and formed relationships that [REDACTED] continues to rely on today. However, these deals and relationships are specific to [REDACTED] and the Petitioner; they do not apply to the field as a whole. The Petitioner has not articulated any original work that has impacted the field of business development and

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commercialization. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

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

The plain language of this criterion requires that the petitioner is an author of scholarly articles in the 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 Petitioner provided several articles in which his name is mentioned. The Director determined that the Petitioner did not meet the requirements of this criterion because the articles are not scholarly in nature, but instead report news. On appeal, the Petitioner states that, "a scholarly article for an International Business Developer and Commercialization Expert is in the form of various news coverage in the major trade media and publications regarding his commercialization efforts." He then identifies an article regarding the technology industry in [REDACTED] as well as others that quote him on the state of the industry.

The articles provided are not themselves evidence of the Petitioner's authorship of scholarly articles in the field, in professional or major trade publications or other major media. First, the plain language of this criterion requires the Petitioner's "authorship" of qualifying articles; however, the Petitioner has not provided an article he authored. Second, the articles must be scholarly. The articles provided do not report on original research or experimentation, involve scholarly investigations, or contain substantial footnotes or bibliographies. Instead, they are news articles documenting deals, developments, and trends.

The regulation at 8 C.F.R. § 204.5(h)(4) reads: "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." On appeal, the Petitioner states that, "a scholarly article for an International Business Developer and Commercialization Expert is in the form of various news coverage in the major trade media and publications regarding his commercialization efforts." In order to demonstrate that the news articles provided are comparable to scholarly articles, the Petitioner should explain why (1) the standards do not readily apply to his occupation, and (2) the news articles by others are comparable to scholarly articles by the Petitioner.

The Petitioner does not directly address either of these requirements. However, even if the Petitioner established that the standards of this criterion do not readily apply to his occupation, he has not provided evidence or an explanation as to why the news articles provided are comparable to scholarly articles. The articles provided are about the communications and IT industries generally, or about the accomplishments of [REDACTED] and [REDACTED] as companies. Articles about a company's product, quoting the Petitioner as the spokesperson of that product, are not comparable to scholarly

articles, in which the author reports on his own research in the field, typically in a peer-reviewed journal.

In addition, it is the Petitioner's burden to explain how newspaper articles about the industry, even when quoting the Petitioner, are comparable to scholarly articles. The Petitioner submitted an article entitled [REDACTED] published in [REDACTED] which quotes the Petitioner in his capacity as a Member of the Working Committee of the [REDACTED] on the state of the communications and IT industries in [REDACTED]. It is clear that the article's author relies heavily on an interview with the Petitioner for the article's content. However, whereas a scholarly article represents the culmination of hours of work of research, followed by peer-edited drafts, the Petitioner has not provided evidence to indicate that his interview with the newspaper article's author is comparable to such work. The peer review process allows other experts to evaluate a scholar's work for originality and accuracy. In the case of [REDACTED] however, the Petitioner has not provided evidence to suggest that his statements were critically evaluated by other members of his field. Finally, the article does not suggest the interviewer was soliciting the Petitioner's findings or opinions based on past research or other work. Giving an interview as the spokesperson of a committee is not comparable to presenting one's own findings.

As a result, the articles submitted are not comparable evidence and do not satisfy this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

According to the plain language of this criterion, the petitioner's work must have been displayed at artistic exhibitions or showcases. The Petitioner provided evidence that he has attended various conferences and exhibitions. The Director determined that the Petitioner did not meet the requirements of this criterion because he did not provide evidence of the display of work that was his, or evidence of display at an artistic exhibition or showcase. On appeal, the Petitioner states: "Work was displayed at [REDACTED] and [REDACTED] was awarded at the show." He also references the display of [REDACTED] at exhibitions.

The Petitioner's attendance at various technology and trade conferences does not equate to the display of his own work at an artistic showcase. Although the Petitioner indicates that [REDACTED] displayed its products at conferences, these events were not showcasing the Petitioner's own work in the field of business development and commercialization, but instead involved the exhibition of [REDACTED] tablet product. As discussed above, [REDACTED] operates out of Canada since [REDACTED] whereas the Petitioner began representing the company's already developed products in the Asia market in 2006. The record does not contain [REDACTED] patents listing the Petitioner as an inventor. In addition, the trade shows and conferences identified by the Petitioner are not artistic exhibitions or showcases. The Petitioner is not an artist and has not created tangible pieces of art that were on display at exhibitions or showcases. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

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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 demonstrated eligibility for this criterion. A review of the record reflects that the Petitioner submitted sufficient documentary evidence to show that he performed in a leading role for an organization or establishment with a distinguished reputation, as required by 8 C.F.R. § 204.5(h)(3)(viii). Specifically, the Petitioner served as CEO for India Operations and then CEO, Asia & Senior Vice President, for [REDACTED], a company whose distinguished reputation is apparent from awards it has won and the media coverage. The record also shows that the Petitioner performed in a leading role for [REDACTED]. Accordingly, the Petitioner has met 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 petitioner must present evidence of objective earnings data showing that he 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 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).

The Petitioner provided evidence regarding the average salary for someone in his field. An internet print-out dated October 18, 2013 from the Association of Executive Search Consultants states: “The base salary for senior-level executives in the Asia Pacific region during the year ended Sept 30 was \$243,642.” The Petitioner also included a print-out from the U.S. Bureau of Labor Statistics stating that the U.S. national salary estimate for chief executives in May 2013 was \$248,760. The Director determined that the Petitioner did not demonstrate he commanded a high salary compared to others in his field because he did not submit evidence of his own salary.

On appeal, the Petitioner indicates he has received multiple offers from companies who seek to hire him. However, the Petitioner has not submitted documentation regarding previous salary or other remuneration, such as non-salaried compensation, bonuses, stock options, etc., that he received for his work. Without any such documentation, the record as it currently stands does not contain evidence that the Petitioner commanded a high salary or other significantly high remuneration for services in relation to others in the field. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show that the Petitioner 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); *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010). As the Petitioner has not done so, the proper conclusion is that the Petitioner has not satisfied 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 documented the level of expertise required for the classification sought.³

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.

Cite as *Matter of H-S-*, ID# 13009 (AAO Sept. 11, 2015)

³ 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).