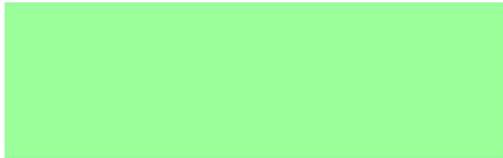




U.S. Citizenship
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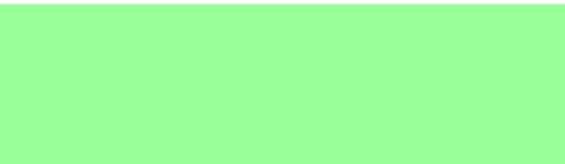
(b)(6)



DATE: **JUN 14 2013** 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:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on December 19, 2012, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in climatology and water resources engineering. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria²

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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation establishing that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO concurs with the findings of the director for this criterion.

Accordingly, the petitioner established 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) 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 be reviewed to see whether it rises to the level of original scientific or scholarly-related 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, counsel claims:

[The petitioner] has offered evidence of his impressive citation record. At the time he filed his original petition, [the petitioner] had been cited 195 times over the course of his career (2005-2011). At the time [the petitioner] responded to a USCIS Request for Evidence issued on August 8, 2012, [the petitioner’s] citation record had increased to 377 citations. **As of January 10, 2013, [the petitioner’s] citation record has continued to rise and is now at a total of 423 citations.** . . . In the Denial, the USCIS officer dismissed evidence of this increase in the number of citations to [the petitioner’s] published works, stating, “USCIS will not consider this evidence as a petitioner must establish eligibility for the requested benefit at the time of filing the I-140 petition.” In doing so, the USCIS officer was mistaken. The

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

AAO has considered evidence of an accelerating rate of citations after the original filing date.

* * *

[E]ven if [the petitioner's] accelerating citation record is not considered, [the petitioner's] citation record at the time he filed his I-140 petition also clearly demonstrates that his original works are of major significance to his field of endeavor. At the time of the original filing, [the petitioner] has been cited a total of **195 times** over the course of his career (from 2005 to 2011). At this level of citations, [the petitioner] satisfies this criterion.

(Emphasis in original.)

In addition, counsel submitted several unpublished AAO decisions. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Moreover, the specific facts of the case, which include, for instance, the specific nature of the citations and the submission of supporting documentation, are not in the record. Without the records, it cannot be determined whether the facts of any other case are similar to those of the present case.

Furthermore, in regards to the submission of additional citations in response to the request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) and on appeal, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. 884, 886 (BIA 1989) (citing *Matter of Atembe*, 19 I&N Dec. 427, 429 (BIA 1986); *Matter of Drigo*, 18 I&N Dec. 223, 224-225 (BIA 1982); *Matter of Bardouille*, 18 I&N Dec. 114, 116 (BIA 1981)). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977) emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing a petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l

Comm'r 1977), which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Here, the petitioner failed to submit any documentary evidence in response to the director's request for additional evidence or on appeal that demonstrates that any of the additional citations occurred prior to the filing of the petition.

Moreover, while the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been of major significance in the field. The cumulative number of citations of the petitioner's work does not necessary demonstrate that the petitioner has made original contributions of major significance in the field. For example, an alien who authors a high volume of articles but has few citations to each of his articles may cumulatively have a high number of citations but that is not reflective of the articles having been of major significance in the field. In contrast, the individual citations for each of the petitioner's published materials, as well as the submission of supporting documentation, is a better indicator to establish the impact or influence of the petitioner's work on the field, so as to demonstrate original contributions of major significance in the field. Rather than focusing on the total number of citations for all of the petitioner's work, the AAO will review the number of citations for each of the petitioner's authored materials.

At the initial filing of the petition, the petitioner submitted screenshots from [REDACTED] and [REDACTED] indicating that the petitioner's work has been cited approximately 195 times. A review of the petitioner's published material submitted by the petitioner reflects that the petitioner cited himself approximately 64 times. While the petitioner's self-citations demonstrates the impact of his work on his own later work, the remaining 132 independent citations by others is not evidence that the field has widely applied his work, so as to show that his original work has been of major significance in the field.

In addition, according to the documentation submitted by the petitioner at the initial filing of the petition, the petitioner's two highest cited articles were: "[REDACTED]" (41 citations) that includes five self-citations, and "[REDACTED]" (34 citations) that includes four self-citations. It is noted that the petitioner's remaining articles were cited 18 or less times that also includes self-citations. The AAO is not persuaded that such citations are reflective that the petitioner's work has been of major significance in the field. The petitioner failed to submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. Instead, at the initial filing of the petition, the petitioner submitted several e-mails that generated favorable comments on the petitioner's articles, requested copies of the petitioner's work, or requested answers to additional questions. The evidence falls substantially short of establishing that the petitioner's original contributions have been of major significance in the field.

The petitioner's documentary evidence is not reflective of his work having been of major significance in the field. Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published material is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of major significance in the field. The AAO is not persuaded that the moderate citations of the petitioner's individual articles are reflective of the significance of his work in the field. The petitioner failed to establish how his work has significantly contributed to his field as a whole.

Similarly, at the initial filing of the petition, the petitioner submitted documentary evidence regarding the downloaded history of his published material, including evidence reflecting that two of his articles, "[REDACTED]" and "[REDACTED]" were ranked in the "Top 25 Hottest Articles." However, downloads merely demonstrate an interest in the research but do not demonstrate that the reader ultimately found the research useful or even relevant as citations would demonstrate. According to the petitioner's documentary evidence submitted at the initial filing of the petition, the petitioner's first article above was cited one time and that was only in the petitioner's own work. Moreover, the second article was cited 15 times but five of those were self-citations. Again, the minimal citations of the petitioner's articles are not reflective that the petitioner's original contributions have risen to a level of major significance.

Likewise, the petitioner's evidence includes documentation that he has presented his findings at various scientific conferences, such as the [REDACTED] along with numerous other participants. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner's conference presentations have been frequently cited by independent researchers or have otherwise significantly impacted the field.

Again, while the presentation of the petitioner's work demonstrates that the petitioner's work was shared with others and may be acknowledged as original contributions based on the selection of them to be presented, the AAO is not persuaded that presentations of the petitioner's work is sufficient evidence establishing that the petitioner's work is of major significance to the field as a whole and not limited to the engagements in which they were presented. The petitioner failed to establish, for example, that the presentations were of major significance, so as to establish their impact or influence beyond the audience at the conferences.

The petitioner submitted several recommendation letters. While the recommendation letters establish the petitioner's original contributions, they do not demonstrate that those contributions have been of major significance in the field. The letters briefly describe the petitioner's original research and findings but make general statements that the petitioner's research has been of major significance without providing any detailed explanation as to how the petitioner's work has been of major significance in the field. For instance, [REDACTED] stated that the petitioner "is the first researcher to look at the effect of seasonality of climate variability on hydrometric network

design” and “[t]his finding is very important for designing of hydro-climatic networks as well as water resources planning purposes.” Although [REDACTED] identified an original contribution, he failed to indicate any hydrometric networks that have been designed as a result of the petitioner’s research, so as to demonstrate the significance of the petitioner’s work on the field. Similarly, [REDACTED] stated that the petitioner’s “research contributions are already enormously felt in various sectors.” [REDACTED] failed to elaborate how the petitioner’s research contributions have been “enormously felt,” so as to establish that the petitioner’s contributions have been of major significance in the field. [REDACTED] stated that “the work being done by [the petitioner] has a substantial value to various U.S. government agencies, such as the U.S. Department of Agriculture, U.S. Bureau of Reclamation, U.S. Geological Survey, U.S. Army Corps of Engineers, U.S. Environment Protection Agency, and other similar federal organizations.” [REDACTED] failed to specify how any of the Governmental agencies have applied the petitioner’s work, and failed to provide any details as to the impact of the petitioner’s research so as to demonstrate that it has been of major significance in the field.

When discussing the significance of the petitioner’s research, the recommendation letters indicate that the petitioner’s research has been published in various scientific and professional journals. For instance, [REDACTED] stated that the petitioner’s “publications with their very high quality and being significant contributions to the engineering practice concerning the management of water.” The publishing of the petitioner’s work demonstrates the originality of it, but it does not establish that it has been of major significance in the field. Simply authoring articles is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) without evidence showing that the original contributions have been of major significance. Moreover, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

As indicated above, the recommendation letters reflect that the petitioner has made original contributions based on his research. However, the letters fail to indicate that his contributions are of major significance in the field. Moreover, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. For instance, [REDACTED] stated that the petitioner’s “novel approaches to the issue of drought in various areas of the United States are a potentially integral part of the country’s future.” Also, [REDACTED] stated that “I am very convinced that [the petitioner] [will] have [an] influential impact on the field of water resources.” Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner’s research, while original, is still ongoing and that the findings he has made are not currently being implemented or widely applied in his field. Accordingly, while it is not disputed that the petitioner’s research and findings are original, as well as the fact that the field has taken some notice of his work, the actual present impact of the petitioner’s work has not been established. Rather, the petitioner’s references appear to speculate about how the petitioner’s findings may affect the field at some point in the future. Eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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 further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner’s research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field.

The recommendation letters also discuss the petitioner’s skills, education, and talents. For example, [REDACTED] indicated the petitioner’s “rare talent and well-rounded knowledge.” Further, [REDACTED] stated that “the unique skills possessed by [the petitioner] for drought forecasting will be needed now and in the future.” However, none of the letters indicated how the petitioner’s skills or personal traits are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to make original contributions of major significance in the field. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

While some familiar with the petitioner’s work describe it as “extraordinary,” there is insufficient documentary evidence demonstrating that the petitioner’s work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the statutory or regulatory language but do not explain how the petitioner’s contributions have already influenced the field. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that the “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. Moreover, the letters considered above primarily contain bare assertions of the petitioner’s status in the field without providing specific examples of how those contributions have been of major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner’s present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is, however, ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to

whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added].” Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner failed to meet the plain language of this regulatory criterion.

Accordingly, the petitioner failed to establish that he meets 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 the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.” Based upon a review of the record of proceeding, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, the AAO concurs with the findings of the director for this criterion.

Accordingly, the petitioner established that he meets this criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

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 the field of endeavor.

Even if the petitioner had 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[ir] 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. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small

percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains 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* section 103(a)(1) of the Act; section 204(b) of the Act; 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).