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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: **NOV 25 2013**

Office: TEXAS SERVICE CENTER

FILE: [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:

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 athletics “in the field of training and showing American Saddle Bred horses,” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective 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.

The petitioner’s priority date established by the petition filing date is January 6, 2013. On February 1, 2013, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on May 10, 2013. On appeal, the petitioner submits a statement with additional documentary evidence. For the reasons discussed below, the petitioner has not established her eligibility for the classification sought.

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, international 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 did not 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 not satisfied 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. Previously Approved O-1 Petitions

The petitioner notes on appeal that she previously received a nonimmigrant O-1 visa and opines that the O-1 criteria have changed over the years. The petitioner, however, is not seeking to renew her nonimmigrant visa but is seeking classification as an immigrant, a distinct classification. While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center as the law is clear that an agency is not bound to follow an earlier determination as to a visa applicant where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 534 U.S. 819 (2001).

B. Evidentiary Criteria²

The director concluded that the petitioner had not submitted evidence of a qualifying one-time achievement or, in the alternative, evidence that met the plain language requirements of at least three criteria at 8 C.F.R. § 204.5(h)(3). Specifically, the director concluded only that the petitioner had documented qualifying awards and memberships. On appeal, it appears that the petitioner is under the

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

impression that she must demonstrate that she is the recipient of a one-time achievement that is a major internationally recognized award, and that she must meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). However, the petitioner is only required to satisfy one of these regulatory requirements. This decision will evaluate whether the petitioner meets either of these requirements below.

C. Evidentiary Criteria³

1. One-time Achievement

As the claimed one-time achievement, defined at 8 C.F.R. § 204.5(h)(3) as a major internationally recognized award, the petitioner submitted evidence of the gold medal for the [REDACTED]

[REDACTED] The director determined that this award did not amount to a one-time achievement pursuant to the regulation. At the outset, on appeal the petitioner submits evidence confirming that gold medals are routinely the top award at a given competition. At issue is not whether the petitioner received the top award at the competition, but whether the top award at this particular competition qualifies as a major internationally recognized award.

The regulation at 8 C.F.R. § 204.5(h)(3) provides in pertinent part:

A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of [the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x)].

Evidence of a one-time achievement that is a major, internationally recognized award includes, but is not limited to a Nobel Prize. 1990 U.S.C.C.A.N. 6710, 6739. An award qualifies if the petitioner can demonstrate that the award is internationally recognized and the field generally regards it as a major award in the field as a whole. Notably, lesser internationally recognized awards for excellence fall under 8 C.F.R. § 204.5(h)(3)(i), and cannot, by themselves, establish eligibility.

With regard to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), a Federal Court recently stated:

The . . . debate over what constitutes a “major” international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those awards that are “major” and those that are not. The applicable law in this case draws no clearer line, other than to establish that some awards are “major, international recognized award[s]” and others are “lesser nationally or internationally recognized prizes or awards.” 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to

³ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

differentiate between “major” and lesser awards. In legislative history, Congress named the Nobel Prize as its sole example of a major, internationally recognized award that would by itself demonstrate “extraordinary ability.” *Kazarian*, 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner’s] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define “major” in this context. It entrusted that decision to the administrative process.

Rijal v. U.S. Citizenship & Immigration Services, 772 F. Supp. 2d 1339, 1345 (W.D. Wash. 2011) *aff’d*, 683 F.3d 1030 (9th Cir. 2012). This same court determined that USCIS consider the relevant factors and articulate a rational connection between the facts and the outcome. *Id.* at 1345-46.

The petitioner must demonstrate that her claimed one-time achievement is internationally recognized. International recognition results, not from the individual or organization that issued the prize or the award, but through the awareness of the accolade in the eyes of the field internationally. An international level competition may issue lesser awards that merely receive local or regional recognition, which do not meet the plain language requirements of the regulation.

In support of the position that this award is recognized as one of the top awards in the field as a whole, the petitioner submitted an email from [REDACTED] dated January 23, 2007. Ms. [REDACTED] asserted within this email that the event in which the petitioner received the above named award “has become the most important and prestigious international event for [REDACTED]’ However, the record does not contain evidence to corroborate this claim. Expert opinion testimony does not purport to be evidence as to “fact;” instead such testimony should be corroborated with other evidence. *See Matter of V-K-*, 24 I&N Dec. at 502, n.2; *Matter of Caron International*, 19 I&N Dec. at 795.

Media coverage in an international media outlet or within multiple national outlets is one type of evidence that can corroborate claims of international recognition. With respect to such coverage, international online accessibility by itself is not a realistic indicator of a given website’s reputation; rather the media outlet’s reach is relevant. For example, the Cable News Network (CNN) broadcasts internationally, and as a result, the CNN website is significant and content posted on the CNN website can be considered to garner national recognition. The petitioner submitted numerous forms of media coverage with the petition and in response to the RFE. The only media that appears to relate to the claimed one-time achievement, however, is a pamphlet relating to the competition. The petitioner did not submit evidence establishing that this pamphlet was published material, nor did she demonstrate that it demonstrates international recognition.

The remaining evidence that might support Ms. [REDACTED] claims consists of letters all containing similar language. Specifically, the petitioner submitted the following letters that contain nearly identical language:

- February 3, 2010 letter from [REDACTED]
- February 3, 2010 letter from [REDACTED]
- February 3, 2010 letter from [REDACTED]
- March 4, 2013 letter from [REDACTED]

As a general concept, when an applicant or petitioner has provided affidavits from different persons that contribute to her eligibility claim, but the language and structure contained within the affidavits is strikingly similar, the trier of fact may treat those similarities as a basis for questioning the claims. *See Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When affidavits contain such similarities, it is reasonable to infer that the applicant or petitioner who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive. *See Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). Because the letters appear to have been drafted by someone other than the purported authors, the letters possess little probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The petitioner also submitted a March 4, 2013 letter from [REDACTED] Manager and Trainer of [REDACTED] Regarding the gold medal for the [REDACTED] competition Mr. [REDACTED] stated:

She was competing and winning at national events and was subsequently chosen out of hundreds . . . of equestrians to be part of the elite group of equestrians to represent the national team of [REDACTED] in the [REDACTED] Teams are selected after participation at the [REDACTED] consist of a 3 Day elimination process using five (5) [REDACTED] and a high-low scoring system. Riders could participate at [REDACTED] only after qualifying for provincial colors during the [REDACTED] season. Provincial Teams consisted of a maximum of six (6) Provincial riders per Gait. In [the petitioner's] case she was selected for both three-and five-gaited divisions.

This selection to the national team in [and] of itself is the highest achievement any athlete, or in this case, any equestrian, strives for – to represent your country on the world stage and compete against the world's top equestrians.

This letter from Mr. [REDACTED] in addition to his previous letter, contains language that is identical to the language in other expert letters and it carries less evidentiary weight as noted above. Regardless, while this letter discusses the selection process for the national team that competed at the event, his letter does not establish that awards at this event are major, internationally recognized awards.

Finally, the record reflects that the [REDACTED] competition contained representatives from five nations. The petitioner has not established that a major internationally

recognized award in her field would attract competitors from only five countries. As stated above, lesser internationally recognized awards fall under 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner has not submitted sufficient evidence to satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3) relating to “a one-time achievement (that is, a major, international recognized award).”

As the record lacks sufficient evidence that this award is an internationally recognized major award in the field, it will not serve to meet the regulatory requirements at 8 C.F.R. § 204.5(h)(3).

2. Remaining Evidentiary Criteria

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

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that she meets 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.

The director determined that the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that she meets 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 discussed the evidence submitted for this criterion and found that the petitioner had not established her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned her 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 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 director discussed the evidence submitted for this criterion and found that the petitioner had not established her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Therefore, the petitioner has abandoned her claims under this

criterion. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. The petitioner also has the responsibility to demonstrate that she actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."⁵ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Within the proceedings before the director, the petitioner claimed eligibility under this criterion based on her performance as a team manager for the [REDACTED] in 2005 and 2006. The director discussed the evidence submitted for this criterion and found that the petitioner had not established her eligibility. On appeal, the petitioner also references her work as a coach for the [REDACTED] specifically, the development of the under privileged.

Within the director's decision, he indicated that the petitioner's evidence relating to this criterion consisted of a letter from [REDACTED] and evidence that she served as a team manager of the [REDACTED]. The petitioner did not indicate within the appeal that the director failed to consider additional evidence that was on record in the proceedings before the director.

Both of Mr. [REDACTED] letters contain duplicative language that is also contained in letters from other authors that the petitioner submitted. Therefore, these letters carry diminished evidentiary weight and will not serve to qualify the petitioner under this criterion.

The record does contain a letter from [REDACTED] Chairman of the [REDACTED]. Within his letter, Mr. [REDACTED] described the requirements to be selected as a team manager for the association. However, Mr. [REDACTED] did not provide a description of the role that the petitioner performed within this position, nor did

⁵ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on November 12, 2013, a copy of which is incorporated into the record of proceeding.

he describe the impact that the petitioner's performance had on the [REDACTED]. As such, Mr. [REDACTED] letter will not serve to demonstrate that the petitioner has satisfied this criterion's requirements.

With respect to the petitioner's role as a coach, the record lacks evidence of the number of coaches [REDACTED] employed and an explanation for how they fit within the organizational hierarchy. The record also lacks evidence of the petitioner's impact on [REDACTED] such that the petitioner has established the critical nature of her role for [REDACTED] as a whole rather than simply to individual riders.

Even if the petitioner had demonstrated that she performed in a leading or critical role for the [REDACTED] the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the alien has performed in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Thus, USCIS can infer that the plural in the remaining regulatory criteria has meaning.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Summary

The petitioner has not satisfied the antecedent regulatory requirement of a one-time achievement that is a major internationally recognized award, or 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 have risen to the very top of the 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[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.⁶ Rather, the proper conclusion is that the petitioner has not satisfied 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 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.

⁶ 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).