



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: MAR 16 2015

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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 (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,

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. The director found that the petitioner had met only the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, the petitioner submits a brief and additional evidence. The petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (viii), and (ix).

For the reasons discussed below, we agree that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

## I. LAW

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals

seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

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

## II. ANALYSIS

### A. Evidentiary Criteria<sup>1</sup>

The Form I-140, Immigrant Petition for Alien Worker, was filed on February 4, 2014. The petitioner seeks classification as an alien with extraordinary ability in the field of environmental engineering. At the time of filing, the petitioner was working as a Senior Consultant with [REDACTED] in New Jersey. Previously, the petitioner worked in Colombia holding jobs such as consultant, professor, and Director of the Civil and Environmental Engineering Programs at [REDACTED].

*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 had not established eligibility for this criterion. On appeal, the petitioner asserts that her membership in “the [REDACTED] [REDACTED]” and its peer evaluator/reviewer system meets the elements of this regulatory criterion.

<sup>1</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that she meets or for which the petitioner has submitted relevant and probative evidence.

The petitioner submitted a November 16, 2011, certificate from [REDACTED] Director, Research Development Division, [REDACTED], stating that the petitioner was a “Peer Reviewer of the [REDACTED] [REDACTED] in accordance with the requirements defined in the document of the ‘Recognized Peer Reviewers Information System of the [REDACTED] [REDACTED]’” The submitted evidence does not establish that service as a peer reviewer constitutes membership in an association. Significantly, the regulations include a separate criterion for participation as a judge of the work of others at 8 C.F.R. § 204.5(h)(3)(iv), and the petitioner’s service as a peer review will be addressed there. There is no presumption that evidence directly relating to one criterion must also satisfy another criterion. To hold otherwise would undermine the regulatory requirement that a petitioner satisfy three criteria and the statutory requirement for extensive evidence.

The petitioner also submitted an August 24, 2012, letter in the Spanish language from Mr. [REDACTED] We note that while the translator certified the English language translation as complete and accurate, the translation contains additional wording not included in the original document. For example, Mr. [REDACTED] letter reads, in part:

[REDACTED]

The accompanying certified English language translation of Mr. [REDACTED] letter states:

The identification of those **outstanding members** who meet the requirements defined in the bylaws section described above, and from the records of the resumes of researchers in the platform [REDACTED], we proceed to invite them to be part of **the Exclusive Bank of Scientists** through the [REDACTED] For Peer Reviewers, which are accepted national and internationally.

Within the wide area of Engineering, it is the Environmental Engineering subarea. In this subarea, 75 people out of 4,156 people from the full group of researchers are recognized as Peer Reviewers. **It represents the 2% of the group.** In this way, [the petitioner], ID number [REDACTED] issued in [REDACTED] **is part of this 2% of experts that are recognized for their outstanding achievements**, and has been invited to join the [REDACTED] **field of knowledge.**

(List attached).

[Emphasis added.]

In addition, a March 17, 2010 letter, from [REDACTED], Director, [REDACTED] states: [REDACTED]

[REDACTED] However, the accompanying certified English language translation states:

I would like to invite you to become a **member of [REDACTED] exclusive group of scientists** as recognition to your career **and outstanding achievements in original research in your field of expertise**, and as an opportunity to contribute to strengthening the scientific and technological development of the country. I will greatly appreciate your prompt confirmation and permission to include your name in **our selective group of scientist[s]**.

[Emphasis added.] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing a foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Despite the translator's certification that the English language translation is "accurate," the above text emphasized in bold does not appear in the original Spanish language letters. The translator's personal assertions are not evidence. In her appellate brief, the petitioner quotes and relies upon this mistranslation to support the assertion that selection as a peer reviewer for [REDACTED] requires outstanding achievements. With regard to the multiple inaccuracies in the submitted English language translations, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if the petitioner had established that participation within a group of peer reviewers for [REDACTED] is a level of membership in an association, which she has not, she has not established that inclusion on their list of peer evaluators requires outstanding achievements as judged by recognized national or international experts.

On appeal, the petitioner references the [REDACTED] document entitled "Service for Information of Recognized Peer Reviewers of the [REDACTED]." Article 4 of this document provides the following general minimum requirements "to be recognized as peer reviewer of the [REDACTED]":

- Graduate degree (master or doctorate) or 10 years of research experience or technological innovation;
- Directed one research or technological project or participation in three projects and having scientific production or outcomes associated with projects within the last 10 years;
- Having at least three products resulting from the research, scientific or technological development conducted in the last 10 years (these products include research papers, research books, book chapters, patented or registered products/technological processes, products or technological processes not normally covered by patents, standards based on research

results, gray literature and other non-certified products, dissertations, participation in graduate programs, and disclosure of a group's research project results);

- Filling out the resume instrument;
- Filling out the registration box of peer reviewers; and
- Fulfillment of the basic conditions of the peer reviewer role.

At issue for this criterion are the requirements for selection, not the petitioner's actual achievements. Moreover, the requirements must be reflective of outstanding achievements in the field. On appeal, the petitioner asserts that "[i]t is universally accepted that an ability to demonstrate such achievements as described in the above requirements signifies excellence in one's professional endeavors." The petitioner, however, has not established that the preceding list of requirements rises to the level of outstanding achievements. For example, the U.S. Department of Labor's *Occupational Outlook Handbook (OOH)*, 2014-15 Edition provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-3>, accessed on March 10, 2015, copy incorporated into the record of proceeding. The handbook states that faculty members are pressured to perform research and to publish their findings and that the professor's research record is a consideration for tenure. In addition, doctoral programs require graduate students to prepare "a doctoral dissertation, which is a paper presenting original research in the student's field of study." See <http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-4>, accessed on March 10, 2015, copy incorporated into the record of proceeding. This information reveals that authoring research publications and preparing a dissertation for graduate program are standard accomplishments in a university setting that do not set the author apart from other faculty in the field. In addition, Article 4 of the [REDACTED] document states that those "who have no graduate degree or those which, being retired from the activity does [sic] not have research projects or products in the last 10 years may also register their resume and apply for recognition as peer reviewers." Accordingly, the petitioner has not established that the requirements for inclusion in the registry of peer reviewers constitute outstanding achievements.

The petitioner further states that she is also a member of two research groups within [REDACTED] and [REDACTED] and characterizes both as "research groups" and "another level of membership." Regarding [REDACTED] and [REDACTED] the petitioner only provided evidence that she was part of each research group. The petitioner did not document that either research group constitutes an association with a membership body as required by the regulation or a separate level of membership in [REDACTED] as asserted by the petitioner, rather than a division that members voluntarily join without restriction according to their interests. Specifically, the bylaws only discuss the mission of the research groups without implying that nationally or internationally recognized experts select members of the research groups based on their outstanding achievements. Similarly, Mr. [REDACTED] discusses the national databases of research groups, the participant researchers, and the importance of the real time information these databases provide to science policymakers but does not discuss the requirements for participating in these research groups. The evidence of record is insufficient to demonstrate that the petitioner's involvement with either of these entities meets the plain language requirements of this regulatory criterion.

In light of the above, the petitioner has not established that she meets this regulatory 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's service as a peer reviewer meets this regulatory criterion.

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

The director determined that the petitioner had not established eligibility for this criterion. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *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. 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

The evidence supports the director's finding that the petitioner meets this regulatory criterion.

*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 had not established eligibility for this criterion. On appeal, the petitioner asserts that she has performed in a leading or critical role for [REDACTED] in [REDACTED] Columbia and [REDACTED].

The petitioner submitted documentary evidence showing that [REDACTED] has a distinguished reputation. For example, the petitioner submitted media reports about [REDACTED] and the results of a university rankings report prepared by [REDACTED], an independent management consulting firm, listing the top fifty ranked higher education institutions in Colombia. The [REDACTED] university rankings show that [REDACTED] was ranked fifth in the nation.

The submitted evidence, however, does not establish that the petitioner played a leading or critical role for the university. In support of her claim of a leading or critical role for [REDACTED] the petitioner submitted a letter from [REDACTED] "Director (E) of the Institute for [ ] Sustainable Development" [REDACTED], in which he states that [REDACTED] falls under the Engineering Division at [REDACTED] and "leads the environmental discussion in Colombia" through the [REDACTED] Conference. Mr. [REDACTED] asserts that the petitioner's critical role for [REDACTED] was through teaching and developing "specialized international and national courses" and through coordinating the [REDACTED] extension of the [REDACTED]. In addition, the petitioner submitted a letter from [REDACTED] stating that the petitioner was "an active participant in teaching of engineering and environmental management students" at [REDACTED] and "participated as

professor on several academic courses and graduate programs of the [REDACTED]” The petitioner, however, has not established that her role as a professor and coordinator of one extension of one conference constitutes a leading or critical role for [REDACTED] or for [REDACTED].

The petitioner also submitted a letter from Dr. [REDACTED] a former “Associate Professor, Researcher, and Chairman of Civil Engineering” at [REDACTED] from 2000 – 2006, stating that the petitioner served as an “academic peer, guest lecturer/visiting scholar, researcher, and peer reviewer” at [REDACTED]. In addition, Dr. [REDACTED] asserts that the petitioner “led accreditation process of the Civil Engineering program . . . to achieve the [REDACTED] [REDACTED] (2004), and . . . the International Accreditation given by the United States Board for Engineering and Technology” (2010), but there is no documentary evidence to support the assertion of the petitioner’s participation as leader of the UdN accreditation process during the times specified. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). In addition, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field). Moreover, the petitioner has not established that her specific involvement in the accreditation process for the Civil Engineering program at [REDACTED] was a leading or critical role for the university.

While the petitioner submitted curricula for courses she designed and taught at [REDACTED], there is no evidence demonstrating that these courses have impacted [REDACTED] or even [REDACTED] beyond the university’s need for competent professors who prepare curricula for academic courses. The petitioner did not provide an organizational chart or other similar evidence to establish where her teaching position fit within the overall hierarchy of [REDACTED] or the [REDACTED]. The submitted evidence does not demonstrate how the petitioner’s role differentiated her from the other lecturers, researchers, and professors working at [REDACTED] or the [REDACTED] or among their tenured faculty and directors. The submitted documentation does not differentiate the petitioner from the other professors and faculty so as to demonstrate her leading role, and does not establish that she contributed to the university and the [REDACTED]; in a way that was significant to their success or standing. Accordingly, the petitioner has not established that she has performed in a leading or critical role for [REDACTED] or the [REDACTED].

Furthermore, had the petitioner established her leading or critical role for [REDACTED] she has not shown that [REDACTED] enjoys a distinguished reputation. Although the petitioner submitted promotional slides, course information, and a letter from Dr. [REDACTED], Director of the [REDACTED], [REDACTED] discussing the vision and objectives of the [REDACTED], the submitted documentation does not establish the IDS’ reputation outside of [REDACTED]. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

With regard to the petitioner’s role for [REDACTED], the petitioner submitted letters from Dr. [REDACTED] President of [REDACTED] and Dr. [REDACTED], Vice President of [REDACTED] indicating that the

petitioner was the Director of the Civil and Environmental Engineering programs at [REDACTED] from 2007 - 2011. Dr. [REDACTED] listed the petitioner's duties and responsibilities as Director as follows:

- Convene and chair the Department Committee and other meetings the Department.
- Submit proposals to the Academic Dean of Development Department's budget plans, Investments and substantial businesses, budget additions, and changes.
- Oversee the implementation of plans and budgets approved by the appropriate authorities of the University.
- Coordinate activities by Professors of the Department and make them work plans of the semester, present them the Academic Dean for approval, and follow-up according to the guidelines set by the Academic Vice President.
- Promote, coordinate and evaluate the development of research activities through groups, lines, and research projects, and seek, as it is concerned, the resource needs.
- Coordinate the development and updating of syllabi by the Department, in accordance with the applications of the respective program directors and other departments of the university, and give approval for its offer.
- Propose to the Academic Dean the appointment, promotion and dismissal of staff of his or her Department, in accordance with the criteria and procedures established academic and administrative under the Regulations of the University.
- Plan, promote and coordinate the creation and development laboratories, workshops, computer resources and other provisions necessary facilities for the academic activities of the Department, in accordance with criteria of general convenience for the University.

The preceding duties and responsibilities of the Director of the Civil and Environmental Engineering programs at [REDACTED] are indicative of performing in a leading role for the university. In addition, the petitioner submitted documentary evidence of awards and distinctions received by [REDACTED] media articles about the university, and letters of support showing that [REDACTED] has earned a distinguished reputation.

Although the petitioner's role for [REDACTED] and its reputation meet the elements of this regulatory criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. The use of the plural 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. Specifically, the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 2008 WL 9398947, \*1, \*6 (D.D.C. Mar. 2008); *Snapnames.com Inc. v. Chertoff*, No. CV06-65, 2006 WL 3491005, at \*1, \*10 (D. Or. Nov. 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Without evidence showing that the petitioner has performed in a leading or critical role

for more than one distinguished organization or establishment, the petitioner has not established that she meets this regulatory 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 director determined that the petitioner had not established eligibility for this criterion.

The petitioner submitted a March 14, 2012, letter from Dr. [REDACTED] payroll statements, tax documentation, and her employment and special project contracts. Dr. [REDACTED] asserts that the petitioner earned a yearly salary of 56,433,000 pesos as a professor and an additional salary of 129,000,000 pesos as a researcher/consultant. The payroll statement for which the petitioner provided an English translation indicates a monthly base salary of 3,677,948 pesos, which annualizes to 44,135,376 pesos. The petitioner's tax documentation indicates that in 2009, she claimed a salary of 56,433,000 pesos and additional remuneration of 129,000,000 pesos in fees, 86,000 pesos in interest, and 727,000 pesos in other income. The petitioner's employment contract for a position as a professor lists a monthly salary of 2,645,000 pesos. The special projects contracts list various percentages of fees that the petitioner was to receive for specific research projects.

In addition, the petitioner submitted an August 9, 2012, letter from [REDACTED] Director of Human Resources at [REDACTED], stating that the petitioner's salary was 185,433,000 pesos in 2009, which was "one of the highest salaries among others who are at the top of her field serving as professor." Ms. [REDACTED] explains that salary is based on education and experience and provides several tables in which she attempts to compare the petitioner's salary with others in the field, including "top professors," "top researchers-consultants," and "top employees with dual capacity professor and researcher." Ms. [REDACTED] data, however, are inconsistent, unreliable, and do not provide appropriate bases for comparison. For example, she compares the petitioner's 2009 salary as a university professor with the 2005-2006 median faculty salaries in the United States. She then reduces the salaries by a factor of 8.25, which she states is the number of times the minimum wage in the U.S. exceed the minimum wage in Colombia. Ms. [REDACTED] does not explain where she obtained the information regarding the minimum wage or why the reduction was appropriate. She continues:

[The petitioner could] command a maximum salary per year of \$107,330,400 COP (USD [\$]60,998.77) over his or her salary as a professor. The fact that [the petitioner] commanded USD \$105,386.60 demonstrates not only that she was paid significantly higher than other top professors/researchers but that she was reaching the ceiling of the maximum pay attainable by a Professor/Researcher in Colombia.

In a subsequent letter dated March 26, 2014, Ms. [REDACTED] asserts that "only 5.4 percent of the university's employees" working as both "Professor/Researchers" and consultants "have commanded a significantly higher salary, such as [the petitioner's]." Ms. [REDACTED] further states that the petitioner's salary was the second highest salary [REDACTED] paid. Salary comparisons limited to those working at [REDACTED] however, are not sufficient to demonstrate a high salary relative to others in the field. The petitioner also submitted a copy of Colombian Decree No. 1238, dated April 13, 2009, modifying professors' salaries in Colombia and providing that the fourth level monthly salary for a professor with a Ph.D., like the petitioner in this matter, is 4,203,996 pesos. None of the submitted documents,

however, provide any data regarding research and consulting fees, the petitioner's other remuneration beyond her salary.

The petitioner also submitted a Human Capital Report relating to salaries for those in higher education in Colombia. According to the Human Capital Report, the third quartile monthly income for full professors, tenure track, class B, is 5,376,000 pesos. In addition, Dr. [REDACTED] stated in her November 16, 2011 and January 21, 2013 letters that the petitioner was Director of the Civil and Environmental Engineering programs at [REDACTED]. The Human Capital Report lists the third quartile monthly salary for a director of an academic program as 4,568,000 pesos. However, the copy of the report submitted does not include data for the 90 percentile as it does for other job titles. The submitted information does not establish that the petitioner's monthly salary as a professor and director of two academic programs, 3,677,948 pesos, falls within even the third quartile for the position she actually held.

Furthermore, the petitioner has not established that a comparison of her salary as a professor plus her research fees is a useful comparison to professors' salaries alone. The research fees constitute other remuneration. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner must demonstrate that any other remuneration separate from her salary as a professor is "significantly high." The petitioner has not submitted objective evidence of research fees in Colombia for comparison purposes. Instead, Ms. [REDACTED] asserts that, when including the petitioner's research fees, the petitioner has earned a "salary that was much higher than the one established in [REDACTED] guidelines." Comparison with fees at one university, however, is insufficient and does not show that the petitioner has earned "significantly high" remuneration for her research and consulting services.

On appeal, the petitioner references the letter from Dr. [REDACTED] Professor of Civil and Environmental Engineering, [REDACTED] providing general information about multiple employment opportunities that are available to environmental engineers. Dr. [REDACTED] states that "the universal title as Environmental Engineer may perform tasks as consultant, researcher and/or professor." Dr. [REDACTED] further states that environmental engineers are "employed at universities or colleges, research firms, testing facilities, major corporations, U.S. Federal government and state and local affiliates, or environmental consulting firms, professional associations or utility companies."

In addition, the petitioner mentions an "Environmental Engineering Overview" from the [REDACTED] that provides information about the type of work that environmental engineers perform including water and air pollution control, recycling, waste disposal, and public health issues. The submitted information further states that "[m]any environmental engineers work as consultants, helping their clients to comply with regulations and to clean up hazardous sites." The submitted overview also includes occupational statistics for the environmental engineering industry.

The petitioner also points to the U.S. Department of Labor's *Occupational Outlook Handbook (OOH)*, 2014-15 Edition, listing the five industries that "employed the most environmental engineers in 2012." The submitted information states that the "median annual wage for environmental engineers was \$80,890 in May 2012." The petitioner, however, did not submit any evidence of her earnings from [REDACTED] from 2012 to the petition's filing date. Regardless, "median" wage data is not a proper basis for comparison. This regulatory criterion requires evidence showing

that the petitioner has earned a high salary or significantly high remuneration in relation to others in the field rather than a just a salary that places her in the top half of the field.

The petitioner asserts that the information about the field of environmental engineering provided in Dr. [REDACTED] letter, the “Environmental Engineering Overview” from the [REDACTED] and the *OOH* shows that “the earnings an Environmental Engineer commands is [sic] determined by the industry in which he or she is employed and as such should be compared to others working in the same field or industry.” In addition, the petitioner contends that “it is acceptable to compare [the petitioner’s] remuneration to other environmental engineers working in the same positions as professors and/or researchers in teaching institutions such as universities and consultants.” We agree with the preceding principles mentioned by the petitioner on appeal. As previously discussed, however, the petitioner has not established that her salary as a professor and director of two academic programs at [REDACTED] was high relative to others in similar positions. In addition, the petitioner did not submit any evidence demonstrating that her remuneration as a consultant was significantly high in relation to others who provide environmental engineering consulting services.

The petitioner must present evidence of objective earnings data showing that she has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *see also 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); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers). The submitted evidence does not show that the petitioner has earned a high salary or other significantly high remuneration for services in relation to others in her field.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

#### B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

#### C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability. This prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each petition must be decided on a case-by-case basis upon review of the evidence of record. Many 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.*, 724 F. Supp. at 1103. *See also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude

USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

We are 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 is not required to treat acknowledged errors as binding precedent. *See Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our 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 has approved a nonimmigrant petition on behalf of the alien, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, \*1, \*3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, while we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of sustained acclaim and expertise required for the classification sought.<sup>2</sup> For example, although the statute and regulations require the petitioner to demonstrate "sustained" national or international acclaim, the petitioner has not submitted any documentary evidence of peer review, authorship of scholarly articles, leading or critical roles, or high salary or other significantly high remuneration subsequent to 2012.

<sup>2</sup> We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

(b)(6)

*NON-PRECEDENT DECISION*

Page 14

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.