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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 27 2015

FILE #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a professor and researcher who primarily studies avian brood parasites, i.e., birds that lay their eggs in the nests of other bird species. The petitioner seeks classification as an alien of extraordinary ability (EB-1) pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(b)(1)(A).

The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for EB-1 classification as an alien of extraordinary ability. On appeal, the petitioner submitted a statement and additional evidence.

While this appeal was pending, the U.S. Court of Appeals for the Ninth Circuit issued a decision concluding that USCIS should reserve any evaluation of the record evidence that otherwise meets the plain language requirements of the regulatory criteria for a separate and subsequent "final merits determination." *Kazarian v. USCIS*, 596 F.3d 1115, 1121-22 (9th Cir. 2010).[1] The AAO requested, received, and considered amicus curiae briefs from the public on the nature of the "final merits determination" and how the AAO should apply this two-step review to immigrant extraordinary ability visa petitions.[2] The AAO incorporated the briefs into the record.

I. THE LAW

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

[1] On December 22, 2010, USCIS issued a policy memorandum adopting the two-step adjudicative approach described in *Kazarian*. *See* USCIS Policy Memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14,* PM-602-0005.1 (Dec. 22, 2010).

[2] The petitioner did not submit a supplemental brief but was apprised of the AAO's request for amicus briefs and was provided copies of the briefs that were submitted.

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

The regulations at 8 C.F.R. § 204.5(h)(2)-(3) define "extraordinary ability" as "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 require that the petitioner demonstrate the alien's sustained national or international acclaim and that his or her achievements have been recognized in the field. The petitioner must establish such acclaim and recognition 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 10 categories of evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). If these standards in 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the beneficiary's occupation, comparable evidence may be submitted to establish eligibility. 8 C.F.R. § 204.5(h)(4).

II. *KAZARIAN* AND THE TWO-STEP REVIEW PROCESS

In *Kazarian*, the Ninth Circuit first recognized the "extremely restrictive" regulatory requirements of this classification. 596 F.3d at 1120 (quoting *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002)). The court then described the "extraordinary ability" regulations as entailing a two-step review.

Step one is the "antecedent procedural question" of whether the petitioner has provided at least three types of evidence described in 8 C.F.R. § 204.5(h)(3). *Id.* at 1121. If so, the agency proceeds to step two, a "final merits determination" of whether a petitioner is at the very top of his or her field of endeavor. *Id.* If, however, the petitioner fails to submit sufficient evidence to show that he or she meets at least three of the evidentiary criteria, the petition may be denied for that reason alone. *Id.* at 1122; *see also Visinscaia v. Beers,* 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

In the agency decision under review in *Kazarian*, USCIS had identified concerns with the evidence submitted and thus found that the petitioner had not satisfied any of the regulatory criteria in 8 C.F.R. § 204.5(h)(3). Finding error with elements of this approach, the court concluded that, during step one, USCIS must "count the types of evidence provided," and may not "unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." *Kazarian*, 596 F.3d at 1121-22. While USCIS's articulated concerns with the evidence presented were not relevant to the antecedent procedural question of whether the petitioner had provided at least three types of evidence as required by 8 C.F.R. § 204.5(h)(3), they might be relevant to the "final merits determination." *Id.* The court described the "final merits determination" as follows:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20; *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339, 1343 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012), *Visinscaia*, 4 F. Supp. 3d at 131 (finding that USCIS appropriately applied the two-step review).

III. AMICI BRIEFS

We will address some thoughtful comments presented in amici briefs. First, some of the amici question the regulatory definition's reference to a "small percentage" of persons who have risen to the top of their field. USCIS, however, is bound by the regulation at 8 C.F.R. § 204.5(h)(2). *See, e.g.*, *Gor v. Holder*, 607 F.3d 180, 191 (6th Cir. 2010) (recognizing the legal principle that an agency is bound to follow its regulations); *see also Muni v. INS*, 891 F. Supp. 440, 443 (N.D. Ill. 1995) (finding the definition at 8 C.F.R. § 204.5(h)(2) to be "a permissible interpretation" of section 203(b)(1)(A)). That regulation includes the term "small percentage" in the definition of extraordinary ability. 8 C.F.R. § 204.5(h)(2); *see also* 56 Fed. Reg. 60,897, 60,898-99 (Nov. 29, 1991) (citing H.R. Rep. No. 101-723, at 59 (1990)) (noting that the House Committee on the Judiciary used the words "small percentage" to describe extraordinary ability); *Matter of Price*, 20 I&N Dec. 953, 954-56 (Assoc. Comm'r 1994) (finding that a golfer had demonstrated that he was within the small percentage of individuals who have risen to the very top of the field of golf).

Second, some of the amici assert that the *Kazarian* court's discussion of a final merits determination is dictum. While the court found error in USCIS's conclusion that the petitioner had not satisfied any of the ten initial regulatory criteria, the court's reasoning was premised on the absence of language in the regulation that would authorize an overall qualitative assessment of extraordinary ability at this initial evidence stage. Furthermore, while it found that the petitioner had failed to show at least three of the initial evidentiary criteria, and thus it had no occasion to proceed to the final merits determination, the court understood the regulations to include a qualitative assessment during the final merits determination. In any event, as noted above, USCIS has adopted as a matter of policy a construction of the relevant regulations as involving a two-step review process, consistent with the process the Ninth Circuit described.

Third, some of the amici contend that the incorporation of a final merits determination would constitute rulemaking and would thus require compliance with the Administrative Procedure Act, 5 U.S.C. § 553. The *Kazarian* court, however, recognized that the two-step review process conforms to the existing regulations. Specifically, the final merits determination simply explains when during the adjudicative process USCIS will review the proffered evidence under the applicable regulatory standards.[3] Our implementation of this review process will be discussed in greater detail below.

Fourth, an amicus brief expressed concern that a final merits determination is inconsistent with a July 30, 1992 letter from Lawrence Weinig, Acting Assistant Commissioner of the legacy Immigration and Naturalization Service (INS), to the INS Nebraska Service Center (Weinig letter). The Weinig letter clarified that officers must evaluate the quality of the evidence, even if the petitioner meets three of the

[3] In any event, USCIS may proceed by formal adjudication in lieu of notice-and-comment rulemaking. *See, e.g.*, *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111, 115-16 (1st Cir. 2009).

evidentiary criteria listed in the regulations. The letter specifically concluded: "[T]he examiner must evaluate the evidence presented. This is not simply a case of counting pieces of paper." It explained that the list of evidence was intended to provide for easier compliance by petitioners and easier adjudication by the officer, but that the evidence nevertheless must establish eligibility for the classification sought, which is defined according to the regulatory standard. The letter advised that no further documentation is necessary *if* this eligibility is established by meeting the required number of criteria. The letter thus implied that if eligibility is not established by meeting the required number of criteria, then additional evidence, and analysis, may be required. The Weinig letter does not define the point in time at which the evaluation of the evidence must occur and does not otherwise conflict with incorporation of a final merits determination.

Fifth, some amici suggest that *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), precludes a final merits determination entirely and therefore conflicts with *Kazarian*. USCIS, like the Board of Immigration Appeals, generally is not bound by published decisions of United States district courts. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). Regardless, we find that the *Buletini* decision does not conflict with but rather supports the *Kazarian* court's characterization of the adjudication process as including a final merits determination.[4]

Moreover, in a precedent decision subsequent to the Weinig letter and *Buletini*, the agency did not simply "count" the evidence submitted in support of an EB-1 petition and deem the individual to have extraordinary ability. Instead, the agency assessed the evidence under the entire regulatory standard and evaluated how the evidence demonstrated the alien's national or international acclaim as a professional golfer who is within the small percentage of individuals who have risen to the very top of his field. *Matter of Price*, 20 I&N Dec. at 956.

IV. TWO-STEP REVIEW

The two-step review articulated in *Kazarian* provides a reasonable interpretation and application of the existing regulatory standard. To promote consistency, USCIS has adopted this two-step review process for cases arising both within and outside the jurisdiction of the Ninth Circuit. Thus, the proper procedure for evaluating an extraordinary ability visa petition is twofold. First, we will analyze the record and count the number of evidentiary criteria met, without imposing novel substantive or evidentiary requirements beyond those set forth by regulation. Second, if the petitioner submits evidence that meets at least three of the criteria, we will then review the record in its totality in a final merits determination to determine if the alien is one of that small percentage of individuals who have

[4] The *Buletini* court, referencing the 1992 Weinig letter, said: "Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in [the regulation], the alien must be deemed to have extraordinary ability unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard." *Buletini*, 860 F. Supp. at 1234. The *Buletini* court did not reject the possibility of a final merits determination. To the contrary, the court implicitly assumed some sort of final merits determination. It did not say that an officer was required to find extraordinary ability once he or she found the three initial evidentiary criteria satisfied. Rather, it said that, in such a case, the officer must explain his or her reasons if he or she ultimately finds extraordinary ability is lacking. Thus, *Buletini* and *Kazarian* are not in conflict.

risen to the very top of their field, has sustained national or international acclaim, and that his or her achievements have been recognized by others in the field of expertise.

At the second step, we consider not only the quantum of evidence, but also its quality (including relevance, probative value, and credibility). *See Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). If the record establishes that it is more likely than not that the individual has sustained national or international acclaim and recognition in the field of expertise, and is one of that small percentage who has risen to the very top of their field of endeavor, the petitioner has met his or her burden of proof. *See id.* at 376.

This review process is consistent with the evidentiary principle that a petitioner's burden of proof includes not only a burden of production, but also a burden of persuasion. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272-80 (1994) (explaining that since the early 20th century the term "burden of proof" has been recognized as including the burden of persuasion). In the context of aliens with extraordinary ability, the regulations logically are interpreted as simply producing a separation of these production and persuasion prongs into sequential considerations, with production being "antecedent" to persuasion. 8 C.F.R. § 204.5(h)(3); *See Kazarian*, 596 F.3d at 1121(referring to step one of the review as the antecedent step).

V. ANALYSIS

A. Antecedent Procedural Question

To establish at least three of the evidentiary criteria contained at 8 C.F.R. § 204.5(h)(3), the petitioner in this case submitted extensive documentation, including the following: (1) his appointment as one of 11 editors from around the world for , the official journal of the and his service on the editorial boards of five other journals; (2) letters thanking the petitioner for serving as a nominator for the participating in the merit review process, reviewing grants for the and the and reviewing manuscripts submitted to various journals for publication; (3) letters from experts in the petitioner's field; (4) scholarly articles in journals such as and the as well as conference presentations; (5) published material exclusively about the petitioner's work published in and and (6) elective membership of the

On the basis of the documentation outlined above, the petitioner has submitted sufficient evidence to satisfy at least three of the evidentiary categories needed to meet the antecedent procedural step for the EB-1 extraordinary ability classification. We will address four of those criteria below.

1. Evidence of the petitioner's membership in associations in the field which require outstanding achievements of their members

The petitioner has submitted evidence that he is an Elective Member of the [redacted]. The bylaws of the [redacted] confirm that Elective Membership is a special membership category above general membership and these members "shall be chosen for significant contributions to [redacted]." Current elective members vote on new candidates and the [redacted] publishes a list of newly elected members. A list of the [redacted] elected members reveals that the limited number of members is consistent with an exclusive level of membership that requires outstanding achievements of its members. While 8 C.F.R. § 204.5(h)(3)(ii) expressly references a plurality of "associations," we construe this criterion broadly as inclusive of a singular "association."[5] A narrower construction unnecessarily complicates matters and could preclude individuals with extraordinary ability from establishing eligibility if their work is in a field in which only one relevant association exists.[6] Our task during this first step is simply to identify sufficient threshold evidence to reach the final merits determination and weigh all the evidence in its totality. We conclude that the petitioner has satisfied this criterion.

2. Evidence of the petitioner's participation as a judge of the work of others

Evidence of the petitioner's work as an editor, prize nominator, and merit reviewer establish that he participated, 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. 8 C.F.R. § 204.5(h)(3)(iv).

3. Evidence of original scientific or scholarly contributions of major significance

The evidentiary criterion 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). Thus, an alien's contributions to his or her field must be both original and of major significance. *See APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003) (noting that a basic tenet of statutory construction, that a text should be construed so that no part will be inoperative or superfluous, is equally applicable to regulatory construction) (citing *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995)); *cf. TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (stating that a statute should be construed so that "no clause, sentence, or word shall be superfluous, void, or insignificant") (citation and internal quotation marks omitted).

Each evidentiary criterion must be read as imposing separate regulatory requirements; each criterion must be established independently from the other criteria. *See* section 203(b)(1)(A)(i) of the Act (requiring extensive documentation); 8 C.F.R. § 204.5(h)(3) (requiring either a major, international

[5] While it is not binding precedent, we observe that the district court in *Buletini* concluded, similarly, that a single award would satisfy the "prizes or awards" criterion at 8 CFR 204.5(h)(3)(i). 860 F. Supp. at 1230-31.

[6] By way of analogy, were we to ask if one has *children*, we'd reasonably expect a parent of one *child* to answer affirmatively.

recognized award or at least three types of documentation). Published articles and presentations, which may serve to satisfy criteria described in 8 C.F.R. § 204.5(h)(3)(vi) (authorship of scholarly articles in the field, in professional or major trade publications or other major media) also may be considered in evaluating the criterion at § 204.5(h)(3)(v) if such articles and presentations are both original and of major significance. In this case, the evidence submitted by the petitioner establishes that his scientific contributions, as reflected in the scholarly articles and presentations, meet that standard. *Cf. Visinscaia*, 4 F. Supp. 3d at 134 (upholding USCIS' determination that assertions regarding purported original contributions were insufficient because the petitioner failed to demonstrate that the contributions significantly affected the field of endeavor or provide specific evidence of adoption by others in the field).

Here, the petitioner not only submitted evidence of scholarly articles, but also demonstrated that some of his articles have individually garnered numerous independent citations. In addition, the record contains published material exclusively about the petitioner's work. The petitioner submitted evidence that he authored a direct submission article that the published. The petitioner also submitted online materials from the website of the indicating that the journal is "one of the world's most-cited multidisciplinary scientific serials." The webpage provides a link to the independent webpage, which ranks the journal's influence in the 100th percentile.[7] The same site lists an article influence score for this journal in the 99th percentile.[8] Moreover, the record contains a commentary published in the that discusses the petitioner's article in that publication. According to the online materials from the journal's website, commentaries in the "call attention to papers of particular note and are written at the invitation of the Editorial Board."

The petitioner submitted letters of varying probative value. Some letters are generalized, without identifying specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 17 (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 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"); *cf.* section 240(c)(4)(B)-(C) of the Act, 8 U.S.C. § 1229a(4)(B)-(C) (testimony in support of relief from removal applications must be credible and

[7] *See* [hereinafter rankings page] (last visited March 27, 2015), http://www. According to the linked materials, the score is the measure of 7,000 science and social science journals' total importance to the scientific community. *See* Frequently asked Questions [hereinafter FAQs] (last visited March 27, 2015), www.

[8] *See* rankings page, *supra* note 7. A journal's article influence score is a measure of the average influence of each of its articles over the course of five years after publication. *See* FAQs, *supra* note 7.

persuasive and the immigration judge may base a credibility determination on all relevant factors); *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that an agency may give expert testimony based on relevance, reliability, and the overall probative value).

More probative of contributions of major significance, the record contains other letters from colleagues and members of the field in several countries demonstrating use of the petitioner's work both in lectures and in their own research. For example, a professor asserted that the petitioner's "work on acoustic communication, species recognition, and the energetics of development could never have been done without [the petitioner's] contributions to these areas." A professor emeritus at the explained that the petitioner's work was "routinely cited in the primary textbooks in animal behavior," and noted that he utilizes the petitioner's research in his own teaching and research. A professor at the asserted that he is pursuing research on breeding experiments and gene expression profiles based on guidance from the petitioner's research. A professor at the confirmed that he and his students "have used and referred to several of the theoretical concepts pioneered by" the petitioner. A professor related that she regularly uses the petitioner's work in lectures and that her own work on "web decoration in spiders is strongly based on [the petitioner's] experimental work, and [that] his conceptual ideas on colour and colour perception are fundamental to my work on colour in spiders."

Authors of this latter group of letters have described clearly in their letters how the petitioner's scientific and scholarly contributions are both original and of major significance in the field. Several of these researchers have explained how they currently use the petitioner's findings in their own work, such as in their design of testing procedures. Moreover, the petitioner submitted corroborating evidence that existed prior to the filing of his current petition, including evidence of frequent, consistent, and widespread citation to his articles, as well as independent, published journal coverage of the petitioner's work. The record demonstrates the originality of petitioner's contributions and the major significance of his work to leading scientists worldwide. Thus, the petitioner has submitted evidence that satisfies 8 C.F.R. § 204.5(h)(3)(v).

4. Evidence of the alien's authorship of scholarly articles

Based upon the evidence of record described above, the petitioner has established his authorship of scholarly articles in his field in professional or major trade publications or other major media. Specifically, the petitioner submitted several published scholarly articles, including articles published in and the This evidence satisfies the requirements of 8 C.F.R. § 204.5(h)(3)(vi).

B. Final Merits Determination

Because the petitioner has satisfied the antecedent procedural requirement, we now turn to consider the totality of the record of evidence to determine whether the petitioner is an alien of extraordinary ability. In this case, we conclude that the totality of the record shows that it is more likely than not that the petitioner is an alien of extraordinary ability and sustained national or international acclaim and recognition in his field.

First, the petitioner's elective membership in the [redacted] is consistent with a finding of national or international acclaim. The [redacted] elected members vote on this level of membership, which is elevated above the general membership level, and publishes a list of its newly elected members, garnering them name recognition. The petitioner is also a credited member of multiple small editorial boards for distinguished journals. The small number of editors for [redacted] for example, is consistent with an exclusive group of editors and demonstrates that the petitioner has risen to the top of the field. *See Kazarian*, 596 F.3d at 1121-22 (explaining that the nature of an alien's judging experience might be weighed in the final merits determination). Moreover, as with the published list of elected members, the inclusion of the petitioner's name on the journal masthead as a credited editor garners him name recognition consistent with acclaim.

The record also demonstrates that the petitioner's research is original, and his various studies and findings constitute contributions of major significance consistent with national or international acclaim and recognition in his field. The petitioner has published oft-cited scholarly articles in two highly-distinguished scientific journals, including [redacted] and the [redacted] *Id.* at 1121 (explaining that citations of the individual's published articles, or the lack thereof, might be relevant to the final merits determination). Finally, the record is supported by numerous statements from foremost experts in the field indicating that the petitioner's accomplishments are commensurate to their own and that the petitioner is at the top of his field.

V. CONCLUSION

The petitioner has submitted extensive evidence that satisfies at least three of the regulatory evidentiary criteria. He also has established a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," "sustained national or international acclaim," and his "achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3). Lastly, the petitioner has established that he seeks to continue working in the same field in the United States, and that his entry into the United States will prospectively benefit the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203(b)(1)(A) of the Act.

In visa petition proceedings, the burden of establishing eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361 (2006); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The decision of the director is withdrawn. The petition is approved.