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

(b)(6)

DATE: FEB 0 6 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,

for 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" as a "Writer – Motivational Speaker – Magician," 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. Further, the director found that the petitioner did not establish his intent to continue to work in the United States in his area of expertise.

On appeal, the petitioner submits a brief and claims that the director erred in not finding that he meets at least three of the regulatory categories of evidence and that he intends to continue to work in the United States in his area of expertise. For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying 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 he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). We will withdraw the director's finding that the petitioner did not demonstrate his intent to continue to work in his area of expertise in the United States. However, as the petitioner has not established eligibility for the benefit sought, 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 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) 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 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS,* 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that 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[1]

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity.

The director determined that the petitioner's Award was a nationally or internationally recognized prize or award for excellence in the field; however the director found that since the petitioner did not submit any other qualifying awards, the petitioner did not establish eligibility for this criterion as the plain language of this regulatory criterion requires more than one nationally or internationally recognized prize or award for excellence in the field.

Regarding the Award, a review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he received the from the , but the petitioner did not demonstrate that the award is nationally or internationally recognized for excellence in his field. The petitioner submitted a letter from Chairman of the , who claimed "that the Award to magic is what the Oscar is to the movies." Mr. however, did not provide any further explanation or documentation to support his claims. 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); s*ee also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). The petitioner did not submit any other documentation establishing that the Award is nationally or internationally recognized for excellence beyond Therefore, we withdraw the director's finding for this criterion.

The director also found that the petitioner's is not a nationally or internationally recognized award for excellence in the field. On appeal, the petitioner claims that he received the in for " " and in for " " and the director erred in treating these two awards as a single award. Moreover, the petitioner claims that the director ignored an article in the newspaper, which addressed why the petitioner won the award in and reflected that the is a lesser nationally recognized award.

A review of the record of proceeding reflects that the petitioner received awards in and Further, a review of the article discusses why the petitioner received the award but provides no evidence of the award's national or international recognition for excellence. We are not persuaded that this article from a single publication, for which the petitioner did not provide any evidence regarding its standing as a publication, is indicative of a nationally or internationally recognized award for excellence in the field consistent with the plain language of this regulatory criterion.

Finally, the director determined that as the petitioner's receipt of the Fellowship Award "is a tribute [that] the bestows on people that collaborated financially with vaccination campaigns and social[ly] which proves that [he] is a volunteer in various social actions," it was not in his field of expertise. On appeal, counsel indicates that this award claim was withdrawn by the petitioner in response to the director's RFE and does not make any further claims of eligibility.

Therefore, this issue is abandoned. *See 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).

Accordingly, the petitioner did not establish that he 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's membership with the did not establish eligibility for this criterion. On appeal, the petitioner states that "[t]his eligibility category **WAS NOT INVOKED IN THE PETITION,**" and his membership was mentioned "simply to show that he is deemed apt to be a speaker in the United States, showing his intention to enter the Country to continue in his field of endeavor."

As the petitioner is not claiming his eligibility for this criterion on appeal, this criterion is abandoned. *See Sepulveda v. U.S. Att'y Gen.,* 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner did not establish that he 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims that although the director only listed 11 articles in his decision, the petitioner initially submitted 28 articles. A review of the record of proceeding reflects that the petitioner submitted 27 articles and one document that appeared to be an advertisement for a seminar; however the petitioner submitted partial translations for all of the documents.

The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

> (3) Translations. Any document containing 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.

The articles and seminar advertisement submitted at the initial filing of the petition were accompanied by partial or extracted translations or no English language translations. As the regulation at 8 C.F.R. § 103.2(b)(3) requires full English language translations for all foreign language documents, the director issued a request for evidence (RFE) on March 7, 2013, informing the petitioner that "[a]ll non-English language documents must have an English translation" and "[p]artially translated documents are not acceptable."

In response, the petitioner submitted additional translations by a different translator. In general, the articles reflect published material about the petitioner relating to his work. For instance, the articles entitled, "[redacted], and '[redacted] discuss how the petitioner incorporates magic into his motivational speaking routine. However, the regulation at 8 C.F.R. § 204.5(h)(3)(i) also requires the petitioner to include the title, date, and author of the material. In response to the director's first RFE, the majority of the translations did not contain the author of the material and/or the date of the publications.

In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that published material about the petitioner must be published in professional or major trade publications or other major media. At the initial filing of the petition and in response to the director's first RFE, the petitioner did not submit any documentary evidence regarding the publications. In response to the director's second RFE issued on April 11, 2014, the petitioner submitted foreign language documents with a single translation certification. The submission of a single certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, the documentation did not identify the source of the information. For instance, the petitioner submitted a chart that listed 16 newspapers or magazines, publishers, circulation statistics, periodicity, and target audience. The petitioner did not submit any supporting documentation to corroborate the claims on the chart. Further, the petitioner submitted uncertified translations regarding [redacted] that did not identify the source of the information. 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In addition, the petitioner submitted uncertified translations of the purported [redacted] for [redacted] and [redacted]. Notwithstanding that the translations do not comply with the regulation at 8 C.F.R. § 103.2(b)(3), the petitioner did not submit any documentation supporting the claims on the [redacted] USCIS need not rely on self-promotional material. *See 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). Finally, the petitioner submitted a letter from President of who stated that has "a circulation of 20,000 copies," is sold "in newsstands all over the country," and had "more than 10 million copies distributed in the last 10 years." Without additional information, these circulation statistics are not persuasive evidence of professional or major trade publications or other major media.

The petitioner is required to establish that he meets every element of this criterion. 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).. As the petitioner did not submit translations that meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), did not establish that the material was published in professional or major trade publications or other major media, and did not include the date and/or author of the material, the petitioner did not demonstrate that he meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that he meets this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims eligibility for this criterion based on his authorship or publication of nine books and two interactive compacts discs. On appeal, the petitioner, through counsel, claims that "[t]here are no rankings or data that could be presented as hard proof of a successful literary endeavor [in Brazil]." However, the petitioner submitted no documentation to support this assertion. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The petitioner submitted an uncertified translation of a letter from who claimed that she read the petitioner's book, that helped her "remove all doubts that had transformed into a barrier within me." Notwithstanding that the petitioner did not submit a proper translation as required by the regulation at 8 C.F.R. § 103.2(b)(3), the letter does not establish that the petitioner's book has been an original contribution of major significance in the field as a whole. Rather, the letter only reflects the impact of the petitioner's book on an individual. There is no evidence reflecting the influence of the petitioner's book beyond Ms. Similarly, the petitioner submitted a letter from Dr. Chief Operating Officer for to the

petitioner indicating that his books "have captivated and [would enjoy the opportunity to learn more about [the petitioner's] work." Although the letter demonstrates Dr. understanding of s interest in the petitioner's work, it is not reflective of the petitioner's books on the field as a whole. The petitioner did not submit any documentation relating to any of his other published works or compact discs, so as to demonstrate that they qualify as original contributions of major significance in the field. The authorship and publication of books and compact discs in and of themselves are insufficient to meet the plain language of this regulatory criterion without evidence demonstrating that the books and compacts discs have been of major significance in the field.

Furthermore, the petitioner submitted a letter from , Director for , who stated that uses the petitioner's professional services as part of its continuing education program. In addition, the petitioner submitted a letter from Senior Director for who stated that contracted the petitioner to be a presenter entertainer during a travel parks presentation in . Although the letters confirm the petitioner's experience and highly praise him for his skills, they do not offer any evidence that the petitioner's professional services and presentations qualify as original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998).

The petitioner submitted additional recommendation letters that generally claim the importance of the petitioner's work but do not demonstrate that his work has risen to a level of major significance in the field. For example, indicated that the petitioner's lecture "changes the minds of company leadership and brings about a change in behavior in each person" and President of the stated that the petitioner's "books are very important for the development of entrepreneurs." The letters, however, do not provide any further details demonstrating the impact or influence of the petitioner's work on field, so as to establish that his work has been of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of

less weight than preexisting, independent evidence that one would expect of an individual who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers, 4 F.Supp.3d at 134-135* (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1115. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Without supporting evidence, the petitioner has not met his burden of establishing his present contributions of major significance in the field. Further, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, the petitioner did not establish that he meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director found that the evidence reflecting the petitioner's seminars, shows, and lectures did not meet this regulatory criterion, which generally applies to the visual arts.

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *See Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). *See Kazarian*, 596 F. 3d at 1122 (finding that it is neither arbitrary, capricious, nor an abuse of discretion to conclude that presentations at scientific conferences do not qualify as display of the petitioner's work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii)).

Accordingly, the petitioner did not establish that he meets this 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 did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

The petitioner submitted a letter from who stated that the petitioner delivered eight different seminars, and the "[p]articipants [left] the meetings highly enthusiastic about their role and power to promote and control their own development." Moreover, the petitioner submitted a recommendation letter from who stated that the petitioner's "performance is unique and outstanding," and the petitioner's lectures "help[] many businesses by motivating teams to do what at first seems impossible." In addition, the petitioner submitted letters from various organizations such as who thanked the petitioner for his presentations and lectures.

Although the letters confirm that the petitioner provided lectures and shows, they do not provide any specific information establishing that the petitioner performed in a leading or critical role. Rather, the letters discuss the petitioner's "unique" lectures and seminars. Simply having a unique or diverse skill set is not reflective of performing in a leading or critical role. The letters do not describe how the petitioner's role as a motivational speaker/magician/writer contributed to the organizations' successes or achievements. The letters, for example, do not provide information describing how his lectures somehow changed or altered the organizations' direction or approach, so as to demonstrate that the petitioner performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In general, we are not persuaded that an occasional, sporadic, or one-time performance, seminar, or lecture is reflective of a leading or critical role for organizations or establishments as a whole. Simply performing or providing lectures or seminars, even if they are considered noteworthy, does not equate to a leading or critical role. Again, the petitioner did not provide any documentation that demonstrates the results of his work with the organizations. Without evidence establishing that the petitioner performed in a leading or critical role, it is insufficient to submit letters confirming his presentation of lectures and seminars.

Accordingly, the petitioner did not establish that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field."

At the initial filing of the petition, the petitioner submitted a partial translation of an income statement for [redacted] a partial translation of an article entitled, '[redacted]' from [redacted] and foreign language documents without any translations. In response to the director's first RFE, the petitioner submitted the same documentation with the same translation deficiencies except that the petitioner submitted another translation of the article, "[redacted]" In response to the director's second RFE, the petitioner submitted an uncertified translation of his 2012 income tax return and an uncertified translation for [redacted] 2012 tax return. The petitioner also submitted screenshots from O*Net Online reflecting the median annual wages for writers and authors in 2012 is $55,940; screenshots from [redacted] reflecting the average annual salary for writers in 2014 is $60,000, the average annual salary for motivational speakers in 2014 is $70,000, and the average annual salary for magicians in 2014 is $90,000; an article entitled '[redacted]' from [redacted] reflecting the annual average salary in 2013 is $88,000; and an article entitled, '[redacted]' from [redacted] reflecting the annual average salary of a magician in 2011 is between $20,000 to $40,000, depending on the geographical location.

According to the uncertified translation of the petitioner's 2012 tax return, he earned Brazilian Real (BRL) 5,598 from [redacted] BRL 4,496 from [redacted] and BRL 10,123.31 from [redacted] with a total income of BRL 20,217.31 (USD 7,655.20[2]). The petitioner's salaries, both individually and collectively, are substantially lower than the average annual salaries of the professions in the documentation submitted by the petitioner. The petitioner's income tax return also reflects that he received a dividend of BRL 1,228,381,42 (USD 476,216) from [redacted] the petitioner's business. According to [redacted] 2012 tax return, BRL 5,598 was reported as income from employment for the petitioner. The petitioner's dividend disbursement cannot be considered as evidence of his salary. While the business return for [redacted] may be indicative of the petitioner's success as a businessman, he seeks eligibility as a "Writer – Motivational Speaker – Magician" rather than as a business owner or investor. The petitioner has not demonstrated that he has commanded a high salary as a writer, motivational speaker, and magician in relation to others in his field.

In addition, the documentation reflecting the annual average or median salaries does not identify the high end salaries for those performing work with similar responsibilities as the petitioner. The plain language of the regulation requires the petitioner to establish that his salary is high when compared to

[2] See http://www.oanda.com/currency/converter/. Accessed on January 16, 2015, and incorporated into the record of proceeding.

others in the field. As such, average or median statistics do not meet this requirement. The plain language of this regulatory criterion requires evidence of "a high salary or other significantly high remuneration for services, in relation to others in the field." The petitioner offers no basis for comparison showing that his earnings were high in relation to others in his field. The record contains no objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present case, the evidence the petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

Accordingly, the petitioner did not establish that he meets this criterion.

B. Comparable Evidence

In the petitioner's brief submitted on appeal, the petitioner claims that the director did not consider his evidence as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). A review of the record of proceeding does not reflect that the petitioner ever requested that his evidence be considered as comparable evidence. 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. at 128.

Regardless, the regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the specified categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In his brief, the petitioner does not explain why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not applicable to his occupation or how the evidence is comparable to the regulatory criteria. Instead, the petitioner simply claims that comparable evidence should be considered for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the

petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner discusses evidence in his brief that specifically addresses five of the ten criteria at 8 C.F.R. § 204.5(h)(3) that relates to his occupation. An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner's occupation. The petitioner provided no documentation as to why the provisions of the regulation would not be appropriate to the petitioner's profession. Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Accordingly, we evaluated the documentary evidence under the plain language of the regulatory criteria.

C. 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.

III. INTENT TO CONTINUE TO WORK

The regulation at 8 C.F.R. § 204.5(h)(5) states:

> Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner submitted job offer letters requesting his services at such places as Considering the totality of the evidence, the petitioner has submitted sufficient documentary evidence establishing that he intends to continue to work in the United States in his area of expertise pursuant to section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

IV. 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, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[3]

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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