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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an "alien of extraordinary ability" in the arts and business 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.

On appeal, the petitioner submits a brief and additional evidence. For the reasons discussed below, upon review of the entire record, the petitioner has not established that the beneficiary is eligible 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 the beneficiary 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 the beneficiary is one of the small percentage who are 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). 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 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. The Beneficiary's Field

We note that the petitioner did not limit the beneficiary's claimed field of endeavor to only one of the five areas enumerated in section 203(b)(1)(A)(i) of the Act. Rather, he claims he will work in both business and the arts.

In Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed the beneficiary's occupation as an "Event Planner/Film Producer." In response to the director's request for evidence, however, the petitioner submitted a letter confirming that the beneficiary "will continue working in the U[nited] S[tates] in the claimed area of expertise, i.e., PR, Communication[s] and Event Planning." The record does not contain evidence that the beneficiary will be employed by the petitioner in the arts, including as a film producer, actor and/or singer, rather the petitioner will act as the beneficiary's agent for such endeavors. Nevertheless, we acknowledge that the petitioner submitted Memoranda of Agreement regarding roles as a producer and a letter from which states that the beneficiary "has entered into a 'pre-arranged commitment' with

whereby he will be Co-Producer in five (5) of our upcoming and highly anticipated independent films."

The petitioner claims several different past and future fields of endeavor and occupations for the beneficiary including event planner, film producer, public relations, communications, singer and actor. While some of these fields may share common characteristics, each field is nevertheless a distinct and separate field of endeavor. The petitioner may not change its characterization of the beneficiary's field of endeavor depending on which field best fits a particular piece of evidence. To establish the beneficiary's eligibility, the petitioner must establish that the beneficiary meets three criteria in business or three criteria in the arts.

Ultimately, the petitioner must demonstrate that the beneficiary satisfies the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements in event planning, communications and public relations or through his achievements as a film producer, the two areas in which he seeks to work. As the petitioner does not claim that the beneficiary will continue to perform as a singer, the beneficiary's past accomplishments as a musician are not material evidence of his eligibility in public relations or film production. As such, the evidence submitted by the petitioner regarding his music achievements will not be considered here.

B. Prior O-1

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. USCIS denies many I-140 immigrant petitions after it approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

Finally, the beneficiary is in the United States pursuant to 8 C.F.R. § 214.2(o)(3)(v)(B)(5), a regulatory criterion reserved for an alien of extraordinary ability as a nonimmigrant in the arts. The petitioner is seeking classification as an alien of extraordinary ability as an immigrant pursuant to section 203(b)(1)(A) of the Act and not as an alien of extraordinary ability as a nonimmigrant pursuant to section 101(a)(15)(o) of the Act. Therefore, the petitioner must demonstrate that the beneficiary meets the regulatory requirements pursuant to 8 C.F.R. § 204.5(h) and not 8 C.F.R. 214.2(o). Again, although the words "extraordinary ability" are used in the Act for classification under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, given the clear distinction between these two classifications, the beneficiary's receipt of O-1B nonimmigrant classification is not evidence of the beneficiary's eligibility for immigrant classification as an alien with extraordinary ability.

C. Translations

The director's request for evidence informed the petitioner "[a]ll non-English language documents must have an English translation." Specifically, 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.

While the petitioner submitted some certified translations of foreign language documents, the record contains a number of documents without certified English translations and thus, those documents have no probative value.

D. Evidentiary Criteria[1]

> *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 discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. We, therefore, consider this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director found that an article in [redacted] 'qualifies as published material about the alien in major professional, trade publications or other major media," but did not indicate "the date of the article," and therefore, did not satisfy this criterion. In general, in order for published material to meet this criterion, it must be about the beneficiary, be printed in professional or major trade publications or other major media and be related to the alien's work in the field for which classification is sought.

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

Although the petitioner submitted a copy of the article which indicates the date on appeal, it does not include the author's name and is not about the beneficiary. In fact, the beneficiary is not even mentioned in the article. Similarly, the record contains a number of additional articles which also do not mention the beneficiary. Articles that are not about the beneficiary do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

While the petitioner submitted an article about the beneficiary's collaboration with two other individuals in the petitioner has not established that this newspaper constitutes major media. The petitioner submits evidence that it enjoys a circulation of 30,000 daily and 60,000 on Sundays. The petitioner has not established that these numbers are indicative of major media. Moreover, the petitioner did not document the distribution of the newspaper such that the petitioner has established whether it has a local or national reach.

The remaining evidence in support of this criterion includes articles in a foreign language without a certified English translation, screenshots, photographs of the beneficiary, and promotional materials. Regarding the article in , the article is about and only briefly mentions the beneficiary's band. The beneficiary's singing career, as previously stated, is not related to the beneficiary's work in film production or public relations, the field he seeks to pursue, and thus, the articles related to his band cannot be considered here. The foreign language articles written are not accompanied by English translations as required by the regulation. We note that since the regulation at 8 C.F.R. § 204.5(h)(3)(iii) specifically requires the title, date, and author of the material, Screenshots and or video clips from do not meet the plain language of the regulation, as they are not "published material" and do not include the title, date and author of the material. Similarly, photographs with accompanying printed or handwritten captions identifying the beneficiary are not published material about the beneficiary relating to his work consistent with the plain language of the regulation. In addition, flyers, advertisements, posters, and other promotional material are not qualifying published material as they are not independent, journalistic coverage of the beneficiary relating to his work.

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

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. We, therefore, consider this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9.

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

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. 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. 2003). Contributions must be documented and rise to the level of original business-related contributions "of major significance in the field." Recognition of the beneficiary's skills does not equate to contributions of major significance in the field. Furthermore, regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F.Supp.3d at 134 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

The director determined that the submitted reference letters "describe the beneficiary's experience and accomplishments," but do "not establish that the beneficiary's work equates to original contributions of 'major significance' in the field of endeavor." On appeal, the petitioner asserts that the submitted letters demonstrate that the beneficiary "was able to apply his unique creativity and talent to bring 'out of the box' solutions leading to results that would not have been possible using tried and tested conventional approaches." The petitioner also attests to the beneficiary's "unique ability to organize and promote their events, attracting the crème de la crème of society, sports stars, music stars, Hollywood stars and the business world, to increase revenue and improve their popularity." 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 certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998).

The record contains a number of additional letters of recommendation from colleagues and acquaintances. On appeal, the petitioner asserts that because the beneficiary's "contributions are of a creative nature, and the application of his contributions are to unique, one-off never to be replicated artistic projects, it is impossible and inappropriate to judge [the beneficiary]'s qualification[s] against objective and independent standards." Therefore, the petitioner "conten[ds] that comparable evidence should be considered." The petitioner further asserts that "the letters of [redacted]...are opinions of experts in the field in question and their evaluations of [the beneficiary]'s work as being original and of major significance should be taken at face value as expert opinions." Regarding the petitioner's request for consideration of comparable evidence, the petitioner does not explain what evidence, besides the letters, should be considered as comparable evidence. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner does not explain how the letters are comparable evidence; rather, the petitioner asserts that they demonstrate how the beneficiary meets the plain language of this criterion. For the reasons discussed below, the letters do

establish that the beneficiary meets this criterion. 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.

According to Executive Producer at the beneficiary's roles for the films the beneficiary's "personal connections, professional background and experience were of major significance as his role was essential, rather than marginal, to the making of both films." He further states that his work "is also undoubtedly original in that he adds an authentic and artistic layer and flare to a film." According to who worked with the beneficiary on and has known him for fifteen years, "there is an intrinsic quality to his work that is unique." According to Jeff Rice, an executive producer who worked with the beneficiary on and states that the beneficiary's "contribution to the production of these films is both 'original' and 'of major significance.'" He further states that "[i]t is 'original' since [the beneficiary]'s work gave both films an artistic flare that was authentically grounded in reality" and "[i]t is of 'major significance' since both films benefited greatly from [the beneficiary]'s VIP network in the entertainment and fashion worlds." who "first observed [the beneficiary]'s skills…while…onset of " states that the beneficiary's "contribution is 'original' because his work gave both films an artistic flare that was authentically grounded in reality" and "is of 'major significance' because both films benefited from his unique network of high profile clients." The letters also make general statements regarding the beneficiary in the area of public relations, communications and event planning. Mr. states that the beneficiary "attracts many high profile celebrities" and that this, "coupled with business acumen and unique interpersonal skills, make him a hot commodity in the film, fashion and entertainment worlds as a PR/Communication Specialist." Mr. states that the beneficiary is "at the top of his game" and that "[h]is skills are a very hot commodity in the fashion and entertainment industries." The letters, however, primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942, at *5 (S.D.N.Y. 1997). Similarly, 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). Moreover, regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F.Supp.3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Accordingly, contributions to a film or an event that have no demonstrable impact on a field, are insufficient.

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

they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-,* 24 I&N Dec. at 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations.

We note that the record contains additional letters from in support of the beneficiary's application for extraordinary ability. Counsel asserts on appeal that "[a] PR, Event Planning and Communications specialist who does not possess extraordinary ability and who has not made original contributions of major significance would be simply unable to assemble evaluations from such a high number of high profile industry gurus." While the letters attest to the beneficiary's talents, they do not claim that the beneficiary has made original contributions of major significance. Further, receipt of letters of recommendation that do not specify the beneficiary's original contributions of major significance do not meet the regulatory requirements of this criterion, regardless of the author.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[2] 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. *See also Visinscaia*, 4 F.Supp.3d at 134 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

As the letters do not affirm any contributions to either the field of film production or the field of public relations as a whole, the petitioner has not established that the beneficiary meets this criterion.

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

Although the petitioner's initial submission did not indicate which evidence the petitioner claimed would satisfy this criterion, the petitioner asserts on appeal, and in response to the director's request for evidence, that it is the beneficiary's work on a video for The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." According to the petitioner, the "promotional video" is played whenever Mr. hits a three-pointer at the " Contrary to the petitioner's assertion on appeal that the director's decision "acknowledges that the…video…constitutes an artistic exhibition or showcase," the decision only found that the record

[2] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

lacked evidence that the video "is the beneficiary's work." Further, the director specifically requested evidence "that the beneficiary's work has been displayed at artistic exhibitions or showcases," including "that the venue[s] (virtual or otherwise) where the beneficiary's work was displayed were artistic exhibitions or showcases."

In response to the director's request for evidence, the petitioner states that "the video…is showcased at all games at and subsequently transmitted to TV viewers worldwide. This is truly [an] international showcase of his work." The petitioner, however, has not established that a basketball game is an artistic exhibition or showcase. In addition, the petitioner has not established that the beneficiary's performance in the video is on display in the same sense that a painter's or sculptor's work is on display in a gallery or museum. 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 and is not an abuse of discretion. *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)). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. As the beneficiary 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 established that the beneficiary meets this criterion. Finally, as discussed above, the beneficiary's achievements in music are not material to the field in which he seeks to work, public relations and film production.

Accordingly, the petitioner has not submitted evidence relating to the occupations in which the beneficiary seeks to work that satisfies the plain language requirements of 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 established 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." A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) for the reasons outlined below.

The director found that the beneficiary met this criterion based upon his September 12, 2008 contract with and the article from magazine about the March 3, 2008 fashion show. As previously discussed the submitted article does not reference the beneficiary. In addition, the contract is dated six months after the fashion show and only generally states that the beneficiary will perform "promotional activities," but does not demonstrate that the beneficiary performed in a leading or critical role. We also note that the petitioner did not include a copy of the entire contract, but only the first and last pages. The regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence of experience "shall" consist of letters from employers. The petitioner did not

submit any evidence from which states that the beneficiary was responsible for the March 2008 fashion show or that he performed in a leading or critical role for their organization.

The petitioner asserts that the beneficiary also meets this criterion based upon his leading and/or critical role for the petitioner, Further, letters written by anyone other than the petitioner's current and former employers can only supplement the required evidence for this criterion.

Regarding the beneficiary's role for a player in the the petitioner submitted a letter of recommendation written Mr. Gallinari for the beneficiary's nonimmigrant O-1 visa. Mr. states that he "had the pleasure of working with [the beneficiary]...through starring in [the beneficiary's] video the hit single created by his band " The fact that Mr. starred in a video for the beneficiary's band is not evidence that the beneficiary performed in a leading or critical role for Mr. who is an individual, not an organization or establishment. Contrary to counsel's assertions on appeal that the beneficiary "was retained by star to devise a PR project to promote Mr. s image," Mr. does not claim to have ever hired the beneficiary and does not claim that the beneficiary played a leading or critical role for him.

Regarding the beneficiary's role for the petitioner submitted paystubs without a certified English translation, as required by 8 C.F.R. § 103.2(b) that have the word Armani handwritten on them. The petitioner did not submit any evidence from Armani to demonstrate that the beneficiary played a leading or critical role for them.

Although the record supports the petitioner's assertion that the beneficiary plays a critical role for the petitioner, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of the beneficiary's leading or critical role for organizations or establishments in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act.

In light of the above, the petitioner has not established that the beneficiary 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 established the beneficiary's 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." A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets the plain language of the regulation for the reasons outlined below.

The petitioner submitted pay vouchers, wage information for event planners and contracts. In response to the director's request for evidence, the petitioner submitted additional information,

including salary information for the fields of public relations and communications. The director found that the beneficiary satisfied this criterion based upon pay vouchers from the petitioner and the mean hourly wage for an event planner.

The pay vouchers are in a foreign language. None of the submitted pay vouchers, however, including the ones from the petitioner, are accompanied by a certified translation, as required by 8 C.F.R. § 103.2(b), and therefore, have no probative value. Further, the submitted vouchers, which date back to 2005, are purported to be from a variety of sources, including the petitioner, but have a virtually identical format. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, contrary to counsel's claims in response to the director's request for evidence that "[r]ecent pay vouchers from [the petitioner] list [the beneficiary]'s current compensation (from [the petitioner] alone) as $5,950 per month," only one of the submitted paystubs indicates such a monthly payment. Other paystubs indicate a monthly payment of $1,250 and $1,450. Based upon the information in the record, the beneficiary's monthly payments vary widely.

Even if the petitioner had established the beneficiary's earnings, and it has not, the petitioner must also submit documentary evidence of the earnings of those in the beneficiary's occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering 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). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Based on the above, the information the petitioner submitted regarding the mean and/or average salary for individuals in the public relations, communications and event planning fields is not sufficient to meet this criterion. Furthermore, based upon the information the petitioner submitted, at least some of the beneficiary's payments were per event. Without evidence of the per event earnings of others at the top of the field, the petitioner cannot establish that the beneficiary satisfies this criterion.

Finally, the petitioner submitted evidence of his contract to receive a percentage of profits for the

movie *The Confines*. While the petitioner projects the amount of money the film may gross, the petitioner has not demonstrated that, as of the date of filing, the petitioner has not demonstrated that the beneficiary actually commanded any specific amount as of the date of filing. Without the actual profits of the film, the petitioner cannot demonstrate the amount that the beneficiary had commanded as of the date of filing, the date as of which the petitioner must demonstrate the beneficiary's eligibility. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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

E. 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 the beneficiary satisfies three of the ten regulatory criteria.

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, 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]

[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).

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 the beneficiary's 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.