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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **JUN 10 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before us on a motion to reopen. We will grant the motion and affirm the denial of the petition.

The petitioner, a traditional Chinese opera performer, seeks classification as an "alien of extraordinary ability" in the arts, 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 individuals 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 established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim. In addition, the director determined that the petitioner had not established that she was among that small percentage at the very top of her field of endeavor. In our September 26, 2014, decision, we upheld the director's decision.

The petitioner filed the motion to reopen on October 17, 2014. The petitioner's motion includes a brief and additional evidence. On April 3, 2015, we issued a notice to the petitioner requesting that she submit the originals of [REDACTED] and her "Membership Certificate of [REDACTED]." The petitioner responded by submitting the requested documents. Accordingly, the petitioner has complied with the regulation at 8 C.F.R. § 103.2(b)(5), and overcome our previous finding that she did not submit the requested original documents.

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

#### 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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his 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 she must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

## II. ANALYSIS

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

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

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

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion.

On motion, the petitioner submits a [REDACTED] "Certificate of Congressional Recognition" that she received from Dr. [REDACTED] Member of [REDACTED]. The certificate states: "In Recognition of the Your [sic] High Standards of Excellence and Outstanding Achievements. Your Steadfast Effort to Promote Artistic Cultural Exchanges in the Greater [REDACTED] Area had Injected Creative Spirits into our Local Communities." There is no documentary evidence demonstrating the national or international recognition of the aforementioned award in the petitioner's field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is her burden to establish every element of this criterion. There is no evidence showing that the certificate was recognized beyond the Los Angeles area at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

In addition, the petitioner submits a [REDACTED] commendation from the "County of [REDACTED]" stating: "IN RECOGNITION OF [THE PETITIONER'S] EXCEPTIONAL PERFORMANCE AND IN PRESENTING HER ARTISTIC TALENT, THE COUNTY OF [REDACTED] HEREBY ACKNOWLEDGES HER OUTSTANDING ACHIEVEMENT IN BRIDGING ARTISTIC AND CULTURAL COMMUNITIES . . . ." The petitioner received the aforementioned commendation subsequent to filing the Immigrant Petition for Alien Worker (Form I-140) on April 11, 2011. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the [REDACTED] commendation as evidence to establish the petitioner's eligibility at the time of filing. Regardless, the commendation from [REDACTED] reflects local recognition and not a nationally or internationally recognized prize or award for excellence in the petitioner's field.

In our appellate decision, we stated:

The petitioner submitted a December 1991 certificate from the [REDACTED] stating that she was "Outstanding Young Performer" and a December [REDACTED] award plaque from the [REDACTED] Competition stating that she was awarded "Outstanding Performance." In addition, the petitioner submitted a January 1992 article posted at [REDACTED] entitled [REDACTED] Competition Ended Successfully." The article states that 41 individuals "received the young excellent performs [sic]" award." The petitioner, however, did not submit objective documentary evidence specifying the number of visitors to [REDACTED] to demonstrate that the website's news is indicative of national recognition.

On motion, the petitioner submits an October 2014 [REDACTED] data report (printed from [REDACTED] for [cnki.com.cn](http://cnki.com.cn) as evidence of website's national recognition. The China National Knowledge Infrastructure (CNKI) website, however, is not a primary news source. Rather, the CNKI website offers a searchable database comprised of "9317 titles of full-text journals."<sup>2</sup> The petitioner retrieved the article, entitled "[REDACTED] Competition Ended Successfully," from the CNKI database, but the accompanying English language translation that she provided did not identify the specific Chinese journal in which the article was published. In addition, the submitted translation was not a full English language translation of the online content retrieved from <http://www.cnki.com.cn>.<sup>3</sup> Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing a foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without evidence identifying the journal in which the [REDACTED] article appeared and its readership, we cannot conclude that the coverage is indicative of national recognition. There is no documentary evidence demonstrating that the petitioner's [REDACTED] "Outstanding Young Performer" award was recognized beyond the presenting organization at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

Our appellate decision further stated:

The petitioner submitted an [REDACTED] "Certificate of Honors" stating that she "won the 'Excellent performance award' ([REDACTED]) in the first contest for '[REDACTED] Award' in the [REDACTED]". . . . The petitioner also submitted information about the "[REDACTED] Award" posted at [REDACTED] but no information about the petitioner's "Excellent performance award [REDACTED]" is posted. Further, the petitioner did not submit objective documentary evidence specifying the number of visitors to the [REDACTED] website to demonstrate that its news is indicative of national recognition.

On motion, the petitioner submits an October 2014 [REDACTED] data report for [baidu.com](http://baidu.com) as evidence of website's national recognition. The data report states: "Baidu.com - The leading Chinese language search engine, provides 'simple and reliable' search experience, strong in Chinese language and multi-media content . . . ." The submitted information reflects that [baidu.com](http://baidu.com) is a search engine (similar to Google) and is not a primary news source. The petitioner retrieved the information about the [REDACTED] using the [baidu.com](http://baidu.com) search engine, but the accompanying English language translation that she provided did not

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<sup>2</sup> See [REDACTED] accessed on May 13, 2015, copy incorporated into the record of proceeding.

<sup>3</sup> As a result of the incomplete English language translation, our appellate decision incorrectly stated that the article was "posted at <http://www.cnki.com.cn>" rather than correctly stating that the article had been "retrieved from" the CNKI database.

identify the original source of the [REDACTED] information.<sup>4</sup> Regardless, the petitioner's "Certificate of Honors" states that she won the "Excellent performance award" [REDACTED] and not the [REDACTED] Award." The documentation submitted on motion does not overcome our finding that the results from [REDACTED] did not provide any further information about the petitioner's [REDACTED] "Excellent performance award [REDACTED]" There is no documentary evidence demonstrating that the petitioner's award was recognized beyond the presenting organization at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

In light of the above, we affirm our prior determination that the petitioner has not established that she meets this regulatory 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.*

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion.

With regard to the petitioner's "Membership Certificate of [REDACTED] ([REDACTED]), our decision stated:

The submitted credential misspells "Theatre" on both its cover and in the section with the petitioner's personal information, thus diminishing the reliability of the document. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Despite our request for evidence, the petitioner failed to submit the original of her [REDACTED] membership certificate.

On motion, the petitioner submits the original of her [REDACTED] membership certificate and a December 2013 commentary posted at [REDACTED] mentioning the "many English mistakes within" the [REDACTED] membership certificates. The online commentary confirming the multiple misspellings, however, does not increase the reliability of the petitioner's [REDACTED] membership document.

In our appellate decision, we mentioned that the petitioner submitted a September 2010 verification letter from the [REDACTED] with an accompanying translation stating that she "jointed [sic] the [REDACTED] on September 2001." In addition, we noted that the petitioner

<sup>4</sup> Again, as a result of the incomplete English language translation, our appellate decision incorrectly stated that the article was "posted at [REDACTED] rather than correctly stating that the article had been "retrieved using" the baidu.com search engine.

submitted two letters from [REDACTED] who identified himself as a member of the board of directors of the [REDACTED]

We further stated that none of the submitted letters included an address, a telephone number, or any other information through which the [REDACTED] could be contacted. We determined that the lack of proper contact information as a means for verifying the information in the letters diminished their reliability. We also noted that the letters from Mr. [REDACTED] (dated March 6, 2011, and September 23, 2011) were not consistent in their description of the [REDACTED] membership requirements.

Our appellate decision further stated:

The petitioner submitted a webpage that she alleges is “The Article of Incorporation of [REDACTED]. The webpage has a URL of [REDACTED] and lists two other identifiers for the [REDACTED] but not the [REDACTED]. The petitioner has not established or asserted that the [REDACTED] and the [REDACTED] are one in the same. In addition, the website for the [REDACTED] not [REDACTED]. The submitted English language translation for Article 8 of the Articles of Incorporation states that theater workers “who are at the relatively high level with definite accomplishments . . . may become a member after approval from the standing committee of this association.” Even if the petitioner established that the submitted requirements were for the [REDACTED] and not the [REDACTED] which she has not, we cannot conclude that performing at a “relatively high level with definite accomplishments” rises to the level of “outstanding achievements.” In addition, the submitted evidence does not show that [REDACTED] members’ achievements are judged by recognized national or international experts in their disciplines or fields.

On motion, the petitioner submits information from [REDACTED] website stating that the federation “practices a group membership” consisting of “fifty-two group members,” one of which is the [REDACTED]. In addition, the petitioner submits information about the [REDACTED] that she retrieved using the “Baidu Wikipedia” search engine at [baidu.com](http://baidu.com), but the accompanying English language translation that she provides does not identify the original source of the information. The information from Baidu Wikipedia states that the [REDACTED] “is the highest level association of Chinese theatre in China. All members of the Association have obtained outstanding achievements with the Chinese theatre field, and all of them have the expert level in individual professional field.” The submitted information further states: “All of members are obtained [sic] outstanding contributions such as: playwrights, directors, actors, stage artists, theatre educators, theatre leaders, and theatre activists.” The information from Baidu Wikipedia, however, does not define what constitutes “outstanding achievements” or “outstanding contributions.” Repeating the language of the regulation does not automatically 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); *Ayvr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, \*1, \*5 (S.D.N.Y. Apr. 18, 1997).

With regard to the inconsistent information about the [REDACTED] membership requirements submitted from Baidu Wikipedia, [REDACTED] and the two letters from Mr. [REDACTED] 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. at 591-92. Regardless, the submitted evidence does not show that CTA members' achievements are judged by recognized national or international experts in their disciplines or fields.

In light of the above, we affirm our prior determination that the petitioner has not established that she meets this regulatory 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.*

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion.

With regard to the article about the petitioner in [REDACTED] magazine entitled "[REDACTED]" our decision stated:

Despite our request for evidence, the petitioner failed to submit the original material from the magazine. Accordingly, we cannot assign any weight to this evidence. Regardless, the petitioner did not submit evidence such as objective circulation figures showing that [REDACTED] is a major trade publication or a form of major media.

On motion, the petitioner submits the original of [REDACTED] magazine. In addition, the petitioner submits information about [REDACTED] that she retrieved using the Baidu Wikipedia search engine, but the accompanying English language translation that she provided did not identify the original source of the information. The submitted information states: "[REDACTED] magazine maintains a high circulation figures record with the current monthly circulation figures as 200,000 copies." There is no objective evidence showing the circulation of [REDACTED] relative to other Chinese publications, however, to demonstrate that the magazine is a major trade publication or a form of major media.

Our appellate decision further stated:

The petitioner submitted photographs that she asserts show her "being interviewed by Mr. [REDACTED] anchor for the column of '[REDACTED]' in [REDACTED]." The plain language of this regulatory criterion requires "published material about the alien . . . relating to the alien's work in the field" including "the title, date and author of the material." A television



program interview featuring the petitioner does not meet these requirements. In addition, although the petitioner submitted information from [REDACTED] stating that the [REDACTED] network has “11 stations and a national audience of 1.3 billion” and a letter from [REDACTED] Radio and Television stating that the interview aired on [REDACTED] the petitioner did not submit a complete printed transcript for the television program or evidence of the viewership figures for the specific program on [REDACTED] on which the interview was broadcast.

On motion, the petitioner submits information about [REDACTED] from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>5</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we assign little weight to information for which *Wikipedia* is the source. In addition, the petitioner submits information about [REDACTED] that she retrieved using the Baidu *Wikipedia* search engine, but the accompanying English language translation that she provides does not identify the original source of the information. The submitted information states that [REDACTED] “is the largest opera channel” and has viewership of “180 million people.” Regardless, the plain language of this regulatory criterion requires “published material about the alien” including “the title, date and author of the material.” Again, a television program interview featuring the petitioner does not meet these requirements. In addition, the petitioner did not submit a complete printed transcript for the [REDACTED] program demonstrating that the interview was about her and relating to her work as a performer.

In light of the above, we affirm our prior determination that the petitioner has not established that she meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner meets this regulatory criterion.

<sup>5</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on May 14, 2015, copy incorporated into the record of proceeding.

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

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion. On motion, the petitioner does not contest our findings for this criterion or offer additional arguments. As the petitioner does not offer an argument for this criterion, the issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, we affirm our prior determination that the petitioner has not established that she meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion stating:

The petitioner submitted three articles that she alleges were published in the book [REDACTED]. Despite our request for evidence, the petitioner failed to submit the original of the [REDACTED] book. Accordingly, we cannot assign any weight to this evidence. Regardless, the petitioner did not submit documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or form of major media.

On motion, the petitioner submits the original of the [REDACTED] book. The petitioner, however, has not submitted any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or form of major media. Accordingly, we affirm our prior determination that the petitioner has not established that she meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion. On motion, the petitioner does not contest our findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, we affirm our prior determination that the petitioner has not established that she meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner had not established eligibility for this criterion. On motion, the petitioner does not contest our findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, we affirm our prior determination that the petitioner has not established that she meets this regulatory criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Although the petitioner did not specifically claim eligibility for this regulatory criterion, she submits an event program reflecting that she performed in the [REDACTED]

[REDACTED] in California in [REDACTED]

[REDACTED]. In addition, the petitioner submits an event program reflecting that she performed in the [REDACTED]

[REDACTED] on [REDACTED]. The petitioner performed at the aforementioned events subsequent to filing the Form I-140 petition on April 11, 2011. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider the May 2011 and June 2013 performances as evidence to establish the petitioner's eligibility at the time of filing. Regardless, the petitioner did not submit any specific sales figures for the events. This regulatory criterion focuses on volume of sales and receipts as a measure of the petitioner's commercial success in the performing arts. Therefore, the fact that the petitioner performed before an audience is insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales or receipts reflect the petitioner's commercial success relative to others involved in similar pursuits in the performing arts. The petitioner, however, did not submit documentary evidence of "sales" or "receipts" demonstrating that her performances were indicative of commercial successes in the performing arts. Accordingly, the petitioner has not established that she meets this regulatory criterion.

### B. Summary

For the reasons discussed above, we affirm our prior determination that the petitioner has not submitted the requisite initial evidence, in this case, evidence that 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 individual 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 sustained acclaim required for the classification sought.<sup>6</sup> There is no documentary evidence showing that the petitioner has garnered sustained national or international acclaim as a traditional Chinese opera performer since her arrival in the United States in [REDACTED]. For example, in recent years, the petitioner has not received any nationally recognized awards for her performances or been the subject major media coverage as a traditional Chinese opera performer. The petitioner has not demonstrated that her local performances and honors in California are indicative of sustained national or international acclaim in the performing arts.

Although the new evidence submitted by the petitioner provided a basis for granting the motion to reopen under 8 C.F.R. § 103.5(a)(2), the submitted documentation does not overcome the grounds underlying our prior decision. Accordingly, we will affirm our appellate decision for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The motion to reopen is granted, our decision of September 26, 2014, is affirmed, and the petition remains denied.

<sup>6</sup> We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).