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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 16 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a branding and design agency, seeks to classify the beneficiary 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 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 beneficiary 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 copies of previously submitted documents. The petitioner asserts that the beneficiary meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii), and (viii).

For the reasons discussed below, we agree that the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence for the beneficiary 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 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). 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 beneficiary's sustained acclaim and the recognition of the beneficiary'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 the beneficiary 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 director determined that the petitioner had not established the beneficiary's eligibility for this criterion.

The petitioner submitted a July 22, 2014 letter from [redacted] Publisher and Creative Director, [redacted] stating that the [the beneficiary] received a Gold award in the "Real Estate" category of the [redacted] "Advertising Annual [redacted] competition. The petitioner also submitted internet screenshots of the beneficiary's project from the [redacted] online archives' "Advertising

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

Annual " awards section.[2] In addition, the petitioner submitted information about the award program that states:

- will award Platinum and Gold to the top 100 international entries.
- Entrants from the Americas, Asia and Europe also will be awarded with Silver in the top 100 of each of these regions.
- Those who do not receive Platinum, Gold or Silver awards may qualify for a Merit award.
- Therefore, up to 1,000 Platinum, Gold, Silver and Merit awards will be honored and archived on the website annually.

The submitted information shows that the number of awards annually conferred by the competition, "up to 1,000 Platinum, Gold, Silver and Merit awards," is substantial. The petitioner also submitted a "Frequently Asked Questions" document from the website stating that "winners can order certificates for $25 each" and that trophies "are available to all winners for $250 each." The document further states that magazine "halted production" in 2005 and is no longer in circulation. The submitted documentation does not indicate how many entries competed in the "Advertising Annual " "Real Estate" category in which the beneficiary received a Gold award. Regardless, there is no documentary evidence showing that the beneficiary's Gold award in the Real Estate category is recognized beyond the competition organizer and at a level commensurate with a nationally or internationally recognized award for excellence in the field.

The petitioner submitted a certificate showing that the beneficiary received a "Bronze" in the "Computer-Generated Character" category of the "graphics" discipline. In addition, the petitioner submitted information about the competition from the website stating that "participants can receive a Gold, Silver or Bronze certificate" and that each category "can have multiple gold, silver and bronze" winners. The submitted information further states that only "[o]ne entry in each discipline, architectural, interior, product, graphic and fashion will receive the sought-after trophy at the biannual awards ceremony." The submitted documentation reflects that the confers Gold, Silver, and Bronze awards in numerous categories in the architectural, interior, product, graphic, and fashion disciplines.[3] In addition to the "Computer-Generated Character" category under which the beneficiary received his award, the "graphic" discipline alone includes 26 other award categories. Accordingly, the number of awards conferred by the program is substantial. Receiving an award that is conferred upon a substantial number and percentage of entries is not, without more, indicative of national or international

[2] The online archives include additional awards sections for ' ' *See* http:/ , accessed on February 4, 2015, copy incorporated into the record of proceeding.

[3] For example, there are nine award categories in the architectural design discipline, eight categories in the interior design discipline, 42 categories in the product design discipline, 17 categories in the fashion design discipline, and 27 categories in the graphic design discipline. *See* http:/ http:// , http:/ http:/ and http:/ accessed on March 5, 2015, copies incorporated into the record of proceeding.

recognition for excellence in the field of endeavor or performing at the top of one's field. With regard to the beneficiary's Bronze award in the "Computer-Generated Character" category, there is no documentary evidence reflecting the number of entrants in that category or the percentage of entrants who received awards.

The petitioner also submitted online information about the biannual "Design Awards Gala Ceremony" specifically "[h]onoring the designers of the year." These top awards include only "Architect of the Year," "Interior Design of the Year," "Product Design of the Year," "Fashion Design of the Year," "Graphic Design of the Year," and "Discover of the Year." The submitted information further states: "Please note: Gold, Silver, Bronze, and Honorable mention winners **will not receive** an [sic] awards this evening. Their work will be screened for the audience, but only the list above will be called on stage to receive their trophy." [Emphasis in original] There is no documentary evidence showing that the beneficiary's "Bronze" award in the "Computer-Generated Character" category is recognized beyond the program at a level commensurate with a nationally or internationally recognized award for excellence in the field.

In response to the director's request for evidence, the petitioner submitted a certificate from the Awards stating that Magazine by " " was a Silver Winner" in the "Best Redesign, Consumer" award category. The plain language of this regulatory criterion, however, requires "[d]ocumentation of the alien's receipt" of nationally or internationally recognized prizes or awards. In this instance, the Silver award was presented to " " and not the beneficiary. There is no evidence demonstrating the beneficiary's receipt of the award. In addition, the petitioner submitted the Awards "Rules of Entry" which state that the competition is open to all magazines and that the " recognize excellence in magazine design."[4] The number of Awards conferred annually is substantial.[5] The submitted documentation does not indicate how many entries competed in the Awards "Best Redesign, Consumer" category in which " " received a Silver award. Regardless, there is no documentary evidence showing that the Silver award in the "Best Redesign, Consumer" category is recognized beyond the competition organizer and at a level commensurate with a nationally or internationally recognized award for excellence in the field.

With regard to the beneficiary's award, his award, and the award, the petitioner did not submit evidence demonstrating the national or international recognition of the awards. The information submitted from the competition organizers' websites is not sufficient to demonstrate the national or international recognition of the awards. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The plain language

[4] The submitted information further states that the competition organizer, Magazine, charges a $250 fee for the first entry and $195 fee for each additional entry.

[5] For example, according to the " Award Winners" listing, there were more than 160 award recipients in "magazine design" alone. *See* http:// , accessed on February 4, 2015, copy incorporated into the record of proceeding.

of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally recognized in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the aforementioned awards were recognized beyond the presenting organizations at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that the beneficiary 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.*

The director determined that the petitioner had not established the beneficiary's eligibility for this criterion.

The petitioner submitted an October 24, article about the beneficiary in the ' but the author of the material was not identified as required by this regulatory criterion. In addition, the petitioner submitted information from www a website of , stating that is "Israel's most widely-read daily newspaper." The petitioner also submitted two articles from www (dated January 27, and July 28, stating that is "Israel's most widely-read paper" and "Israel's largest paper, with an exposure of 34.3%." Although the petitioner submitted readership information for , the petitioner did not provide circulation statistics for the [6]. There is no documentary evidence showing that the is a form of major media in the United States or Israel. Accordingly, the petitioner has not established that the beneficiary meets this regulatory criterion.

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

The director determined that the petitioner had not established the beneficiary's eligibility for this criterion. The plain language of this criterion 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 artistic 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 petitioner submitted letters of support discussing the beneficiary's work as an art director and designer for various clients' advertising and marketing campaigns. The director found that the

[6] The cover of the includes an advertisement for a located in New Jersey.

submitted evidence was not sufficient to demonstrate that the beneficiary has made original contributions of major significance in the field.

On appeal, the petitioner asserts that the director erred by disregarding the letters submitted by and The petitioner states that their letters "describe in detail precisely how and why [the beneficiary's] contributions were 'original' and why they were of 'major' significance."

cofounder of , and founder and chief executive officer (CEO) of , states that the beneficiary provided web design, promotional, and marketing services for his two companies. For example, Mr. mentions that the beneficiary "created an updated branding campaign and a newly designed website for ' The plain language of this regulatory criterion requires, however, that the beneficiary's contributions be "of major significance in the field" rather than limited to the clients for which he has provided design services. *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).

Regarding the originality of the beneficiary's work, Mr. states:

> I can attest to the fact that [the beneficiary] has made an original contribution to his field by revolutionizing real estate marketing and design strategies through the use of new web-based technologies and incorporating them with visually captivating designs. . . . Simply put, [the beneficiary's] approach to real estate marketing and design strategies was an original contribution to his field because it pushed the boundaries and created a new method for designers to address and solve real estate marketing challenges.

While we acknowledge the originality of the beneficiary's marketing and design work for the submitted evidence does not demonstrate that the beneficiary's websites and web marketing campaigns rise to the level of artistic contributions of major significance in the field.

Mr. continues:

> [The beneficiary's] original contributions to his field are of major significance because many design and marketing professionals have followed in his footsteps by creating engaging, interactive, and visually pleasing websites and web marketing campaigns for the real estate industry based on sound market research and strategy. The real estate websites and web marketing campaigns created by [the beneficiary] have been imitated by countless designers and real estate agencies. Indeed, [the beneficiary's] ideas are a winning recipe that has been proven to work. I can certainly say that I owe a great deal of my financial and professional success to his innovative design methods and ideas.

Mr. asserts that "many design and marketing professionals have followed in [the beneficiary's] footsteps," but does not identify them or provide specific examples of how the beneficiary's original work has influenced the way websites are designed, has affected how web marketing campaigns are conducted, or has otherwise been indicative of artistic contributions of major significance in the field. 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).

CEO of , states that the beneficiary and his design team at have become his company's "one-stop shop [] for marketing and advertising needs." Mr. further states:

> [The beneficiary's] innovation was to apply his expertise in creating compelling, functional, and inviting design to solve marketing strategies in the food and beverage industry. His re-design of the website was one of the first restaurant e-commerce sites in the world to apply this innovative approach. His innovative solution makes it simpler and more appealing to order online, which results in a significant increase in sales.

With regard to the beneficiary's redesign of the website, again, the plain language of this regulatory criterion requires that the beneficiary's contributions be "of major significance in the field" rather than limited to the clients for whom he has provided web design, marketing, and advertising services. While Mr. comments demonstrate the originality of the beneficiary's work for , they do not demonstrate that the beneficiary's e-commerce design approach rises to the level of an original artistic contribution of major significance in the field.

Mr. continues:

> [The beneficiary's] original contribution to the field is of major significance because he has transformed the way design professionals develop e-commerce strategy for the food and beverage industry. His original contribution has set the tone for what clients in the industry expect because they have realized the profitability of using such a novel design solution to address their marketing challenges. As a result, more and more design and marketing professionals are following [the beneficiary's] lead by utilizing the method that he created. This is but one example of how [the beneficiary's] constant innovation on behalf of his clients are [sic] game-changing in the field of design and vitally important to the success of multiple industries in the US.

Mr. asserts that the beneficiary has "transformed the way design professionals develop e-commerce strategy for the food and beverage industry" and that "more and more design and marketing professionals are following [the beneficiary's] lead by utilizing the method." Mr. however, does not identify the design and marketing professionals in the industry who are utilizing the beneficiary's specific method. Again, USCIS need not rely on unsubstantiated claims. *See 1756,* 745 F. Supp. at 15; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35. There is no documentary evidence showing that the beneficiary's e-commerce design solution has affected the design field or the food and beverage industry in a major way, or that his work otherwise constitutes original contributions of major significance in the field.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). 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 beneficiary's eligibility. *Id. 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"). Without additional, specific evidence showing that the beneficiary's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that the beneficiary meets this regulatory criterion.

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

The director determined that the petitioner had not established the beneficiary's eligibility for this criterion. 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." A review of the record of proceeding, however, reflects 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)(vii). For example, the petitioner submitted evidence showing that the beneficiary's work appeared in the and the . Accordingly, the petitioner has established that the beneficiary 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 had not established the beneficiary's 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, reflects 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 example, the petitioner submitted documentary evidence showing that the beneficiary performed in a critical role as an art director and marketing consultant for and the In addition, the petitioner submitted published material demonstrating that these organizations have a distinguished reputation. Accordingly, the petitioner has established that the beneficiary meets this criterion.

B. Summary

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

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the beneficiary in this matter is also the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a different standard than that required for the immigrant classification, which defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the beneficiary's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. *See also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *See Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence for the beneficiary 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 for the beneficiary 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 beneficiary's level of expertise required for the classification sought.[7]

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[7] 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).