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:

SELF-REPRESENTED

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 systems architect in the information technology field, seeks classification as an "alien of extraordinary ability" in 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 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 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. The director found that the petitioner had met only the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the petitioner submits a statement contesting the director's decision and copies of previously submitted documents. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (viii).

For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence 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 he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). 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. Evidentiary Criteria[1]

> *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 determined that the petitioner had not established eligibility for this criterion.

The petitioner submitted a November 15, 2013 letter from [redacted] Vice President, Information Services, [redacted], Georgia, stating:

> [The petitioner] is [ ] a fulltime employee of [redacted] and works on my team.

* * *

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

> In addition to performing his critical tasks, [the petitioner] also reviews the work of his peers, judges the abilities of his team members, leads our technical interview panel to judge and recruit the right candidates for the team. His judgment and input are always taken into consideration when making critical and important decisions.

The petitioner also submitted a November 6, 2013 letter from Vice President and Client Managing Director, , stating:

> My association with [the petitioner] occurred when he was a full time employee of and worked as a member of my team from November 2010 to July 2013 . . . .
>
> * * *
>
> As part of his daily responsibilities, [the petitioner] was tasked with reviewing and providing feedback on the work of other team members at both our and offshore delivery centers. He was able to establish a fantastic working relationship with his teams, leading them to execute projects with a high level of efficiency while delivering with optimum quality.

With regard to the letters from and the plain language of this regulatory criterion requires evidence that the petitioner has served as "a judge of the work of others." The petitioner has not established that performing routine supervisory duties such as reviewing coworkers' job performance, interviewing and recruiting job candidates, and providing feedback on the work of fellow team members equates to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of staff supervision or internal review of one's coworkers.

In addition, the petitioner submitted a November 15, 2013 letter from , Chief Executive Officer, , Georgia, stating:

> [The petitioner] has exceptional IT [Information Technology] skills in Business Intelligence, Data Warehousing and ETL [Extract, Transform and Load] process and has voluntarily helped our company and our employees many times.
>
> * * *
>
> [The petitioner] is a true mentor and an outstanding leader for all our current employees in high end technology consulting who are working as IT consultants for distinguished clients. He has judged many of our employees by reviewing their performance, solutions, and recruitment.

Ms. asserts that the petitioner "has judged many . . . employees by reviewing their performance, solutions, and recruitment." Again, the petitioner has not established that carrying out duties such as performance reviews and recruitment functions equates to participation as a judge of

the work of others in the field. In addition, the aforementioned assertion in Ms. letter does not constitute evidence of the petitioner's participation as a judge of the work of others. 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). Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). A letter asserting that the petitioner judged "many" employees without specifying the work he judged and the other workers' fields of specialization is insufficient to establish eligibility for this criterion. In this instance, there is no documentary evidence of the petitioner's participation in a formal judging capacity, either on a panel or individually, as specified at 8 C.F.R. § 204.5(h)(3)(iv).

The petitioner also submitted a November 12, 2013 letter from , Big Data Systems Engineer, Information Management, , stating:

> I recently came to know [the petitioner] when we installed the product ' ' for his employer .
>
> * * *
>
> We installed a very latest version 7.0.4 of for our customer which includes lots of new features and functionalities compared to previous versions.
>
> [The petitioner] demonstrated extraordinary ability in integrating into their corporate IT system with all other databases, reporting tools and data integration tool[s] like to perform " ." He was able to review all of the functionalities and database transactions scenarios of to test and verify all the existing and new functionalities of the product.
>
> His critical review of the product with the real enterprise data and integration to test and execute all the test plans demonstrated his deep and extraordinary knowledge, outstanding logical an analytical skills and exceptional abilities to perform critical review and testing tasks.
>
> During his review of latest version of system [the petitioner] performed data integrity test, stored procedure/functions test, load balance test, date type test, database performance test, parallelism test, data size test, transaction concurrency test, integration test, reporting integration test, data security test and data prototyping after integrating historical data of more than 1200 stores, which was truly an incredible task.
>
> * * *

> also relies on the feedback and experience from market and test results and review comments given by [the petitioner] will help to improve our products and help other organizations with mission critical data and looking for a solution with .

On appeal, the petitioner states that he performed a "state-of-the-art-review" of the product " " and "reviewed the functionalities of many products of " With regard to the comments of the petitioner and Mr. the petitioner has not established that performing systems architecture duties for his employer, such as testing and reviewing an product that his company purchased or reviewing the functionality of a data integration tool that his company installed, constitutes his participation as a judge of the work of others in the field. Again, there is no documentary evidence of the petitioner's participation in a formal judging capacity, either on a panel or individually, as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv).

The petitioner further states that he "reviewed billions of global trade transactions, retail accounts and institutional books" while working at In addition, the petitioner states that he "reviewed billions of loan transactions" and "reviewed millions of historic loan data" while working at . The record, however, does not include documentary evidence to support the claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless, the petitioner has not established that conducting such data reviews for his employers equates to participation as a judge of the work of others in the same or an allied field.

In light of the above, the petitioner has not established that he 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.*

The petitioner submitted letters of support discussing his role for , , , and The director determined that the petitioner had not established eligibility for this criterion.

On appeal, the petitioner discusses his work developing information technology systems at . The petitioner previously submitted letters of support from and Project Manager, demonstrating that he has performed in a critical role for their company. For example, the petitioner oversaw development of enterprise data warehouse which was essential to the company's retail finance business. Although the petitioner has demonstrated that he performed in a critical role for he did not submit any documentary evidence showing that has earned a distinguished reputation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's appeal statement also discusses his employment with as an information technology consultant. Regarding the petitioner's role for the November 6, 2013 letter from states:

> My association with [the petitioner] occurred when he was a full time employee of and worked as a member of my team from November 2010 to July 2013; during which time I was serving as an Associate Director - Account Manager at our client site in GA.
>
> * * *
>
> I was with for 8+ years, during which time I spent the last 4 years (September 2009 to July 2013) personally responsible for the client relationship, P&L [Profit and Loss] and delivery management at client site, with direct managerial responsibility for 200+ employees. . . . I was fortunate enough to count [the petitioner] as a key member of my team on this account, where he worked on team.
>
> [The petitioner] served as a Technical Lead on this team, and he was an integral resource who was looked to and counted on by the client in several high-profile projects, including deliveries for Leadership Dashboard, Reporting and Sales & Retention Dashboards. He proved to be a hands-on leader to the other members of my technical team and demonstrated robust knowledge of client requirements, technologies and business processes. We simply would not have enjoyed the success that we had without [the petitioner] the most critical member on the ground, continually exceeding the client's expectations day in and day out, leading the team to successful delivery after delivery.
>
> As part of his daily responsibilities, [the petitioner] was tasked with reviewing and providing feedback on the work of other team members at both our and offshore delivery centers. He was able to establish a fantastic working relationship with his teams, leading them to execute projects with a high level of efficiency while delivering with optimum quality. His technical strengths are centered in advanced data warehouse technologies such and .
>
> * * *
>
> His performance was central to the projects that our team delivered at

Mr. comments on the petitioner's role for as a Technical Lead on the team. While the petitioner's role may have been central to the consultancy projects assigned to the team, there is no evidence showing that his role was leading or critical for . In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment's success or standing. The petitioner did not provide an organizational chart or other similar evidence to establish where his role fit within the overall

hierarchy of The submitted documentation does not differentiate the petitioner from directors, account managers, executives, and other project team leaders, so as to demonstrate his leading role, and fails to establish that he contributed to the company in a way that was of significant importance to the outcome of its activities.

With regard to reputation, Mr. states:

> is one of the fastest growing organizations in IT Services and Consulting. In 2011, named it as the world's third most admired IT Services Company, and is included in both the NASDAQ-100 and the S&P 500 indices with Annual Revenues of USD $7.5B in 2012.

In regard to Mr. assertions regarding coverage in , its stock indices listings, and annual revenues, the petitioner did not submit any documentary evidence to support the statements. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17; *see also Visinscaia*, 4 F.Supp.3d at 134-35. Accordingly, the petitioner has not submitted sufficient evidence to establish that has a distinguished reputation.

On appeal, the petitioner states: "It is understood that organizations like and may not be considered with [sic] distinguished reputation considering the nature of business," because they are technology firms. The petitioner requests that we consider his distinguished work, critical roles, his contributions to the field, and his achievements rather than the reputation of the organizations where he worked. The petitioner's work projects, roles, contributions, and achievements for and have already been considered above. Regardless, the plain language of this regulatory criterion requires the petitioner to perform his leading or critical role for "organizations or establishments that have a distinguished reputation." Working for a technology firm does not relieve the petitioner of meeting the regulatory requirement that the organizations or establishments "have a distinguished reputation."

Regarding his role for the petitioner submitted a November 10, 2013 letter from an infrastructure designer "working in the IT department of " at its location." Mr. whose letter was not on his company's letterhead, states:

> I worked with [the petitioner] for almost 3 years to complete various enterprise IT Projects. We were part of Data Integration Team responsible for the integration of all the business data across the country into a single enterprise data warehouse.
>
> At the time, [the petitioner] was employed by , our Prime IT consulting Vendor, and serve[d] as our assigned Consultant for the various projects.

> [The petitioner] performed a critical role in developing complex modules using Informatica. The role he performed was essential to our successful delivery of the projects, which had significant impact on various business aspects, including Sales, Marketing, and Incentive Management. Without his guidance, the projects, and therefore the company, would have suffered.

With regard to the petitioner's role as a consultant on the Data Integration Team at there is no documentary evidence differentiating the importance of the petitioner's role from that of the other Data Integration Team members, let alone from that of IT managers and executives, so as to demonstrate his leading role for the company. In addition, the submitted evidence does not establish that the petitioner's specific consulting services contributed to in a way that was significant to its success or standing and consistent with the meaning of "critical role." The petitioner did not submit, for instance, evidence from any executives discussing the significance of his specific contributions to the company beyond its utilization of information technology consultants to assist with resource delivery projects.

In regard to the reputation of Mr. states:

> is a privately owned subsidiary of providing digital cable television, telecommunications and wireless services in the United States. It is the third-largest cable television provider in the United States, serving more than 7 million customers, including 3 million digital cable subscribers, 4 million Internet subscribers and almost 3.2 million digital telephone subscribers, making it the seventh-largest telephone carrier in the country.

Regarding Mr. statements concerning , the petitioner did not submit any documentary evidence to support the assertions. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35. Accordingly, the petitioner has not submitted sufficient evidence to establish that has a distinguished reputation.

In addition, the petitioner's appeal states:

> I served many U.S. organizations like and played several lead & critical roles to complete their key enterprise IT projects. I have also very large international experience working and playing lead and critical roles in organizations in other countries like India, United Kingdom and Singapore.

The record, however, does not include any documentary evidence to support the petitioner's assertions regarding his leading and critical roles for the aforementioned organizations. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In light of the above, the petitioner has not established that he meets this regulatory 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 eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion, and the director's determination on this issue will be withdrawn. 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).

The petitioner submitted the following concerning his salary and remuneration:

1. A December 16, 2013 memorandum to USCIS from Vice President of Human Resources, stating that the petitioner "earns a base salary of $120,000 and will receive a 25% ($30,000) bonus around first quarter of 2014";
2. Seven 2013 earnings statements from reflecting that the petitioner received "Gross Pay" of $8,453.96 monthly or $101,447.52 yearly;
3. Three Forms W-2, Wage and Tax Statement, for 2010 from and totaling $80,831.25;
4. A Form W-2 for 2011 from reflecting earnings of $89,664.27; and
5. A Form W-2 for 2012 from reflecting earnings of $99,278.92.

In response to the director's request for evidence, the petitioner submitted four pay statements from covering February 20, 2014 to March 19, 2014. The submitted pay statements reflect that the petitioner earned $4,615.38 biweekly, or approximately $120,000.00 yearly. In addition, the latest pay statement shows that the petitioner received a $30,000.00 bonus on March 26, 2014. The petitioner received these earnings subsequent to filing the Form I-140, Immigrant Petition for Alien Worker, on February 18, 2014. 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 earnings received after February 18, 2014 as evidence to establish the petitioner's eligibility at the time of filing.

The petitioner's response included a January 13, 2013 letter from offering the petitioner employment as a Senior Data Integration Architect at beginning on January 27, 2014 with "an annual salary of USD 228,000/anum." The record, however, does not include any evidence showing the petitioner's actual earnings from

The petitioner also submitted "Salary Search" results from www. for the job titles "architect," "data analyst," "data tester," "ETL developer," "ETL tester," and "Informatica." The online search results list the "Average Salary" of jobs in Georgia that match the aforementioned job titles. The petitioner's reliance on "average" salary data for jobs in Georgia is not a proper basis for comparison. The petitioner must submit evidence showing that he

has earned a high salary or significantly high remuneration relative to others in the field, not just a salary that is above average in his locality.

In addition, the petitioner submitted "O-NET OnLine" summary reports for "Database Architects" and "Data Warehousing Specialists" reflecting "Median wages" of $81,140.00 for 2012. Again, the petitioner's reliance on "median" wage data is not a proper basis for comparison. This regulatory criterion requires evidence showing that the petitioner has earned a high salary or significantly high remuneration in relation to others in the field rather than a salary that simply places him the top half of his field.

The petitioner also submitted July 2013 – June 2014 "Online Wage Library" Foreign Labor Certification "Wage Results" for the [redacted] Georgia" metropolitan statistical area indicating that the Level 4 (fully competent) yearly prevailing wage for "Computer Occupations, All Other" and "Software Developers, Applications" was $108,160.00 and $102,315.00, respectively.[2] The petitioner, however, must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to others in the field, not just a salary that is above the amount paid to the majority of fully competent Applications Software Developers and Computer professionals in the Georgia area. Furthermore, the accompanying descriptions for the "Computer Occupations, All Other" and "Software Developers, Applications" job categories are not similar to the petitioner's job duties as a Data Integration Architect such that the salaries for those occupational categories would represent appropriate basis for comparison in demonstrating that the petitioner's salary was high in relation to others in the field.

Additionally, the petitioner submitted eight electronic filings of Labor Condition Applications for the H-1B Nonimmigrant Visa Program. The applications list prevailing wages for Level II (qualified) and Level III (experienced) "Data Integration Architect" jobs. Again, the petitioner must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to others in the field, not just a salary that is above the amount paid to the majority of qualified or experienced Data Integration Architects in a particular area.

The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); s*ee also 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); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). The submitted evidence does not show that the petitioner has earned a high salary or other significantly high remuneration for services in relation to others in his field.[3]

[2] A "prevailing wage" is defined as "trade and public work wages paid to the majority of workers in a specific area." *See* http://www.businessdictionary.com/definition/prevailing-wage.html, accessed on January 26, 2015, copy incorporated into the record of proceeding.

[3] We note that the online wage data the petitioner provided do not include bonuses.

In light of the above, the petitioner has not established that he meets this regulatory 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 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 level of expertise required for the classification sought.[4]

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.

[4] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d at 145. 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).