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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 23 2015 Office: NEBRASKA 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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the initial filing, the petitioner seeks classification as an alien of extraordinary ability as a " " in the field of " " 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 petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. The director concluded that the petitioner's field is psychology, and the petitioner does not contest that conclusion on appeal. Psychology falls under the sciences. ' is an area within the larger field of psychology, and is not a separate, distinct or standalone field. We therefore will not narrow the petitioner's field to " ." *See Buletini v. INS*, 860 F. Supp. 1222, 1229-30 (E.D. Mich. 1994) (finding that the beneficiary's field was medical science rather than nephrology). The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (vi), and (viii). She further asserts that she has submitted comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, we agree with the director that 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) or comparable evidence. 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 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 her sustained acclaim and the recognition of her 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 he 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]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *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.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that she meets this criterion because she is a member of the) and a member of the . The petitioner has not shown that she meets this criterion

First, she has not shown that requires outstanding achievements of its members, as judged by recognized national or international experts, as required by the plain language of the criterion. On appeal, the petitioner focuses on her role for under this criterion. We will consider the petitioner's role for below under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). At issue for this criterion, however, is not the petitioner's role for , but her membership status and whether requires outstanding achievements of its members. To establish her membership in , the petitioner has submitted an undated letter from Operations Director, stating that the petitioner is a professional member of the association. The petitioner has also submitted an online printout from dreamtalk.hypermart.net, entitled " ." The petitioner, however, has not submitted any evidence showing the requirements for professional membership, such as the bylaws for the association. Although the undated letter from Mr. discusses the petitioner's work and experience, it does not discuss membership requirements. The record also lacks evidence showing that "recognized national or international experts in their disciplines or fields" judge the "outstanding achievements" of members.

Second, the petitioner has not shown that is an association that accepts members. Rather, the evidence, and the petitioner's response to the director's request for evidence (RFE), shows that that provides information on individuals who have received credit for appearing in television shows, movies and other productions. In this case, the petitioner received

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

credit for her appearance on a episode of the television show as a dream analyst. Although the petitioner states that she is a member of she has not presented evidence from or any other source showing that the inclusion of her information in an online database is evidence of her membership in an association. Going on record without supporting documentary evidence is not sufficient for the 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)). Moreover, even if the petitioner has shown that she is a member of she has not shown that requires "outstanding achievements" of the individuals whose information that it posts, or that the "outstanding achievements" are judged by "recognized national or international experts in their disciplines or fields." On appeal, the petitioner asserts that she is "in the celebrity category, [and that her profile] can only be created by ' The petitioner has not explained what she means by "the celebrity category" or shown through her evidence that individuals in the "celebrity category" have accomplished "outstanding achievements," as judged by nationally or internationally recognized experts in their disciplines or fields.

Finally, in her initial filing and her RFE response, the petitioner asserted that her membership in the and constituted evidence of her meeting this criterion. On appeal, however, the petitioner has not continued to assert that her membership in these organizations or establishments constitutes evidence that she meets this criterion. As she did not timely raise these issues on appeal, the petitioner has abandoned these issues. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Accordingly, the petitioner has not submitted documentation of her membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

The director concluded in his decision that the petitioner met this criterion. The evidence in the record supports this conclusion. Specifically, the petitioner has submitted evidence showing that in she appeared on the television show as a dream analyst and that the show was broadcasted on the television channel, which constitutes "major media." Accordingly, the petitioner has submitted published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the petitioner asserts that she meets this criterion because she has authored which the petitioner states is a "highly popular and influential book." In addition, the petitioner asserts that her establishes that she meets this criterion. The evidence in the record does not establish that the petitioner has met this criterion.

First, the petitioner has not shown what impact her book has had in the field of psychology. According to the petitioner's statement initially filed in support of her petition, her book "provides significant contributions to the field of dream interpretation psychology" and "has been well received not only by the dream psychology community, but also by the general public." In the same statement, the petitioner asserts that her "advances and research findings in the field of have consistently been well-received and cited by eminent psychologists and well known media personalities." The petitioner's assertions, however, are not supported by evidence in the record. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Although the petitioner has submitted evidence of her 2013 book signing event, she has submitted no evidence relating to the impact of her book in the field, such as evidence that others in the field have cited her book or relied on her book in their own research or publication. Indeed, none of the reference letters in the record specifically mention the petitioner's book or its impact in the field. The record also lacks any review, from either experts or the general public, of the petitioner's book. The petitioner has not shown what impact, if any, her book has had in the field. Without evidence of impact, the petitioner has not shown that her book constitutes a contribution of major significance in the field.

Second, the petitioner has not shown what impact her public engagements have had in the field. Although the record includes attributed quotations that praise the petitioner's work as a dream analyst, speaker and presenter, the quotations do not establish the petitioner's impact in the field is consistent with contributions of major significance in the field. Initially, the quotations have minimal evidentiary value, because the petitioner has not shown their source(s). The petitioner has submitted a paragraph that praises the petitioner's work in dream psychology. The quotation is attributed to Dr. , Department Chair, Counseling Psychology, . The petitioner has also submitted a paragraph attributed to of the California, praising the petitioner's speaking engagement at the library. Neither of these two documents, however, is dated, signed, or appears on official letterhead. These documents, thus, have minimal evidentiary value.

Third, the reference letters in the record do not establish that the petitioner has met this criterion. The record includes a January 5, 2010 reference letter from , Ph.D., who was the petitioner's professor at Dr. states that the petitioner ranks in the top five percent of all the students she has taught or supervised. Dr. concludes: "I recommend

[the petitioner] with the highest confidence and enthusiasm. She is an excellent candidate for a clinical training position, and she will be a tremendous asset to any organization with which she is affiliated." The letter, which appears to be an employment recommendation letter, does not discuss the petitioner's contributions in the field or establish that the petitioner has done anything in the field that constitutes original contributions of major significance in the field, as required under the plain language of the criterion.

The evidence also includes a July 30, 2012 email from who is a " ." According to Ms. email, the petitioner is "very active in the dreaming community. She holds regular workshops and engages with dreamers around the world with her dream blogs, website and social media outlets." The petitioner has submitted evidence of her appearance on the television show and radio shows and the Theses engagements show that the petitioner has been disseminating her ideas to the public and in the field. They do not, however, show that the petitioner has had any impact in the field after the dissemination. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. Instead, the petitioner must show her impact in the field as a whole that rises to the level of contributions of major significance. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. Dec. 16, 2013) (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).

Finally, the petitioner has not shown that we may consider her development of an app as evidence that she meets this criterion. On appeal, the petitioner states that she released an app in March 2014, after she filed the petition in January 2014. In response to the director's RFE, the petitioner submitted online printouts about the app that show she originally released version 1.0 on March 11, 2014, and it costs $0.99 to download. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of a future event at a level consistent with contributions of major significance. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") As such, her development of the app does not establish that she meets this criterion. In addition, she has submitted no evidence showing the impact of her app in the field, or establishing that the impact of the app rises to the level of a contribution of major significance in the field.

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

(b)(6)

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the petitioner asserts that she meets this criterion because she authored articles that are published in [redacted] She further asserts that '[redacted] magazine, as well as their [sic] social media outlets, classifies as 'other media.'" The petitioner has not shown that she meets this criterion.

First, the criterion states that the petitioner's work must be published in a qualifying publication, or "other major media." As such, even if [redacted] constitutes "other media," as the petitioner asserts, she must also demonstrate through her evidence that [redacted] is "other *major* media." (Emphasis added.) The petitioner has not submitted any information relating to the publication or website, such as [redacted] reach, readership or distribution, that shows that it constitutes "other major media."

Second, the petitioner has not shown that her articles constitute scholarly articles. The petitioner has submitted evidence of her authorship of a [redacted] article entitled '[redacted]." The article consists of five paragraphs. The record also includes an article entitled '[redacted]' that consists of four paragraphs. These articles lack citations, charts or graphs that usually accompany scholarly articles. In addition, the petitioner has not submitted evidence showing that her articles have been subjected to peer-review or edited by an editor. Unlike scholarly articles, the petitioner's articles constitute her personal opinions on specific topics that have not been reviewed, verified or substantiated by anyone else in the field. In the alternative, the petitioner has not demonstrated that other experts in the field consider her articles scholarly, such as but not limited to, treatment of her articles in their own scholarly work. The petitioner thus has not shown that her articles constitute scholarly articles.

Third, the petitioner has not shown that her articles "[redacted]" "[redacted]" and "[redacted]" have been published. The evidence shows that the petitioner posted "[redacted]" in [redacted], but does not show the website or forum on which the petitioner posted the article. The evidence relating to the remaining two articles does not indicate that either has been published. As such, the petitioner has not shown that these articles have been published, or have been published in professional or major trade publications or other major media.

On appeal, the petitioner asserts that since she filed her petition, [redacted] has published another article that she authored. She does not specify the title of the article or submit evidence showing that [redacted] published the article. In addition, as noted, the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49, and cannot secure a priority date based on the anticipation of future publications. *See Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76.

Accordingly, the petitioner has not submitted evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that she meets this criterion because of her role in the [redacted] The petitioner states that she was part of the organizing committee for the [redacted] and was part of a research panel at the [redacted]. The petitioner further asserts that the [redacted] has a distinguished reputation. The evidence in the record does not support the petitioner's assertions.

To establish that she meets this criterion, the petitioner must show she has performed in a leading or critical role for qualifying organizations or establishments. A leading role should be evident based not only on the petitioner's title but her duties associated with the position. A critical role should be apparent from the petitioner's impact on the organization or establishment as a whole. To show her role in an organization or establishment, the petitioner may submit an organizational chart demonstrating how her role fits within the hierarchy of the organization or establishment.

The petitioner has submitted an email from Ms. [redacted] stating that the petitioner "was an active part of the organizing committee for the [redacted]" and "presented a symposium at this conference." The petitioner has submitted a document entitled "[redacted]" that lists her as one of 20 the presenters at the conference. Although Ms. [redacted] states that the petitioner had "an active part" in the [redacted] conference's organizing committee, she does not provide any specific information relating to the petitioner's duties, title or impact on the organizing committee. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, we need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990). The undated letter from Mr. [redacted] makes no mention of the petitioner's participation in the organizing committee. Moreover, the petitioner has not shown that the organization committee constitutes an organization or establishment that has a distinguished reputation.

The record includes evidence that the petitioner has presented at the [redacted] The petitioner, however, has not shown that being one of 20 presenters at a regional conference constitutes her performing either a leading or a critical role for the [redacted] or any other organization. The petitioner has not presented evidence showing that her title and duties within [redacted] are indicative of her leading role, or evidence showing that her impact on [redacted] is indicative of her critical role. Moreover, although the petitioner asserts on appeal that [redacted] has a distinguished reputation, the petitioner has submitted no evidence in support of her assertion as required. *See Matter of Soffici*, 22 I&N Dec. at 165. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v.*

Meissner, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, we need not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 17.

The record includes evidence that in January 2014, the petitioner's presentation entitled " ' was accepted for the then scheduled for As noted, the petitioner must establish her eligibility at the time she filed the petition. As the petitioner filed her petition in January 2014, she may not rely on an event that postdates her filing date to establish her eligibility. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76. In addition, as discussed, the petitioner has not shown that being a presenter at an conference is indicative of her leading or critical role for the organization. The petitioner has also submitted insufficient evidence relating to the reputation, or distinguished reputation, of or the conference.

Accordingly, the petitioner has not presented evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

> *If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.* 8 C.F.R. § 204.5(h)(4).

For the first time in this proceeding, the petitioner asserts on appeal that "comparable evidence has been submitted under each category." The petitioner, however, does not explain how the regulatory criteria do not readily apply to her occupation or specify what evidence in the record constitutes comparable evidence, or how the evidence is comparable to the evidence required under the criteria at 8 C.F.R. § 204.5(h)(3). The petitioner's statement on appeal that she has presented "comparable evidence" that establishes her eligibility, without providing any legal support or explanation, does not require us to conduct a full analysis of this issue. *Cf. Desravines v. United States Att'y Gen.*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009). The petitioner has not met her burden of demonstrating that the criteria do not readily apply to her occupation. Thus, she may not rely on comparable evidence. Further, the petitioner has not demonstrated that she has submitted evidence that is comparable to that required under the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). Evidence that relates to the criteria but does not meet them is not necessarily comparable to evidence that does meet one or more of the criteria.

B. Summary

In response to the director's RFE, the petitioner provided the following statement: "Plea for the consideration of humane circumstances to be incorporated in the case," because the petitioner is the mother of a United States Citizen daughter born in When reviewing the petitioner's appeal, we must follow the guidelines set forth in the Act, relevant regulations and case law, which do not allow us to consider "humane circumstances." In addition, the record includes a number of reference letters that contain conclusory statements of the petitioner's acclaim, without providing

specific information or evidence in support of the conclusory statements. For example, Mr. states that the petitioner " ." In a July 30, 2012 email, Ms. states that the petitioner "is well regarded in our field and an inspiration to her clients." These conclusory statements do not establish the petitioner's eligibility. We need not accept primarily conclusory assertions that are unsubstantiated by evidence in the record. *See 1756, Inc.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

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 petitioner has achieved sustained national or international acclaim and is one of the small percentage who have 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 on which the petitioner relies on appeal in the aggregate, including an appearance on a television show, podcasts, and public engagement events, and publication of a book and articles of undocumented influence, supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.[2]

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.

[2] 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).

ORDER: The appeal is dismissed.