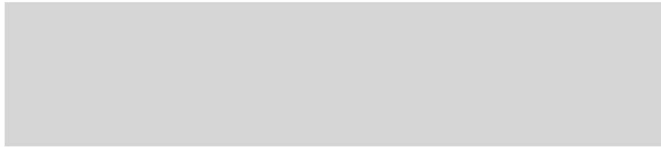


(b)(6)

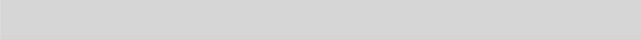
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 05 2015** Office: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:




INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in the arts as an art conservator, 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.

On appeal, the petitioner claims that the beneficiary meets three of the regulatory criteria. For the reasons discussed below, we agree with the director that the petitioner has not established the beneficiary’s 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 the beneficiary 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. RELEVANT LAW AND REGULATIONS

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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who has 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 individual’s sustained acclaim and the recognition of the his or 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 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 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

## II. ANALYSIS

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

*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 established the beneficiary’s eligibility for this criterion. Specifically, the director found that although the petitioner submitted articles that were published in [REDACTED] only the [REDACTED] articles met the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) that requires “[p]ublished 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.” A review of the record of proceeding, however,

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

does not reflect that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets the plain language of this regulatory criterion.

In general, in order for published material to meet this criterion, it must be about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

A review of the record of proceeding reflects that the petitioner submitted 28 articles from five publications – [REDACTED] (1 article), [REDACTED] (11 articles), [REDACTED] (4 articles), [REDACTED] (11 articles), and [REDACTED] (1) article. Although not addressed by the director, the petitioner submitted abstract and summary translations for 23 of the articles that were published in a foreign language. The regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a full and certified English language translation. Because the petitioner submitted summary and abstract translations rather than full English language translations, the evidence is not probative and will not be accorded any weight in this proceeding. Therefore, we will only consider the following articles:

1. [REDACTED] April 14, 1997, by an unidentified author, [REDACTED]
2. [REDACTED] December 31, 1994, by an unidentified author, [REDACTED]
3. [REDACTED] May 5, 1996, by [REDACTED]
4. [REDACTED] March 10, 1995, by [REDACTED] and [REDACTED]
5. [REDACTED] August 9, 2012, by [REDACTED]

Regarding items 1 – 4, the articles do not reflect published material about the beneficiary relating to her work. Although the articles briefly mention the beneficiary as the restorer of particular artwork, the articles mainly discuss artwork and are not about the beneficiary. For instance, regarding item 1, notwithstanding that the petitioner did not include the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the article is about the restoration of the painting, [REDACTED] with the article mentioning the beneficiary as carrying out the restoration. Regarding item 2, the article is about [REDACTED] work on restoring a painting with a brief

mention of the beneficiary working on the project. Regarding item 3, the article indicates that the beneficiary's studio was inaugurated and then discusses the artwork contained in the studio without otherwise addressing her work. Regarding item 4, although the article mentions the beneficiary once as being the art restorer, the article entirely discusses two pieces of artwork by [REDACTED]. None of the articles are about the beneficiary relating to her work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, the petitioner has not established that [REDACTED] are professional or major trade publications or other major media. Regarding [REDACTED] the petitioner submitted screenshots from *Wikipedia*. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>2</sup> For instance, the petitioner submitted screenshots from *Wikipedia* entitled "List of newspapers in Italy" and [REDACTED]. *Wikipedia* provides conflicting information regarding the circulation statistics [REDACTED]. According to screenshot entitled "List of newspapers in Italy," *Wikipedia* reports that [REDACTED] had [REDACTED] readers in 2012, but according to the screenshot entitled [REDACTED], *Wikipedia* asserts that the publication has a circulation of [REDACTED]. As *Wikipedia* contains significant and conflicting circulation statistics, the evidence is not credible in demonstrating that [REDACTED] is major trade publication or other major medium. The petitioner also submitted screenshots from [REDACTED] regarding general background information on the publication but provides no evidence of the standing of the publication; the petitioner did not submit any independent, objective evidence demonstrating that [REDACTED] is a major trade publication or other major medium. USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media).

Regarding [REDACTED] the petitioner submitted screenshots from [REDACTED] who publishes [REDACTED] and the screenshot from *Wikipedia* entitled "List of newspapers in Italy." According to [REDACTED] has a circulation area of [REDACTED] Italy and a circulation of [REDACTED] which is not indicative of a major trade publication or other major medium. Further, according to the screenshot entitled, "List of newspapers in Italy," [REDACTED] has a circulation of [REDACTED] readers. Again, as demonstrated by the conflicting circulation statistics, the

<sup>2</sup> See also the online content from [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on April 9, 2015, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

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

screenshots from *Wikipedia*, in addition to the unreliability of *Wikipedia* in general, are not credible and will not be accorded any weight. Regardless, neither circulation statistics indicate the publication is a major trade publication or other major medium consistent with the plain language of this regulatory criterion.

Regarding item 5, the article is reflective of published material about the beneficiary regarding her work. The petitioner, however, has not demonstrated that [REDACTED] is a professional or major trade publication or other major medium. The petitioner submitted screenshots from *Wikipedia* and documentation from [REDACTED] regarding the 2014 circulation statistics of newspapers in the United States. The documentation indicates that [REDACTED] has a daily circulation of [REDACTED] readers. When compared to the top three newspapers in the United States according to [REDACTED]

[REDACTED] circulation statistics are not reflective of a major trade publication or other major medium; rather a local publication serving the [REDACTED] Florida area.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” The burden is on the petitioner to establish that the beneficiary meets every element of this criterion. In this case, the petitioner submitted one article that was published material about the beneficiary relating to her work but did not demonstrate that [REDACTED] is a professional or major trade publication or other major medium. Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner did not establish that the beneficiary meets this 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 established the beneficiary’s eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” A review of the record of proceeding 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)(v).

Accordingly, the petitioner 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 did not establish 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).

The director determined that the beneficiary’s recommendation letters did not provide any description of a specific instance in which her performance was deemed leading or critical for any organization. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.

A review of the record of proceeding reflects that the petitioner submitted a letter from [REDACTED] Director of Ancient Art, Historical, and Scientific Museums of [REDACTED] Italy, who provided detailed information regarding the beneficiary’s job duties such as lead art restorer for artwork located in public cathedrals, churches, government buildings, and palaces in [REDACTED] Italy. Specifically, [REDACTED] stated that the beneficiary “alone had the final decision to determine the artist’s original intent when attempting to restore an object and determine whether the artist would have preferred minimal intervention to surface/appearance changing restorations.” Moreover, the beneficiary had the responsibility “for weighing the benefits of restoration against the risks by assessing whether intervention was worth the risk.” In addition, [REDACTED] mentioned specific art restoration projects that the beneficiary performed during her employment. Therefore, we find that [REDACTED] letter provided sufficient information to establish that the petitioner performed in a leading or critical role for an organization or an establishment with a distinguished reputation consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that the beneficiary meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The director determined that the petitioner did not establish the beneficiary’s eligibility for this criterion. On appeal, the petitioner did not contest the findings of the director for this criterion or offer additional arguments. Therefore, this issue is abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner did not establish 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 satisfies three of the ten regulatory criteria.

## III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.<sup>3</sup>

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.

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