(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-J-A-

DATE: SEPT. 28, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a bullpen catching coach, seeks classification as an individual "of extraordinary ability" in the athletics. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Currently, the Petitioner is working as a bullpen catching coach for the [redacted] a Major League Baseball team. 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 satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief and additional documentation. In the brief, the Petitioner asserts that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (viii). For the reasons discussed below, the Petitioner has not established his eligibility for the classification sought.

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.

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 sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of 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 documentation 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. Coach and Athlete

In his initial filing, the Petitioner affirmed in the cover letter that he "has an extraordinary and outstanding professional coaching record in the major leagues of both Venezuela and the United States." In part 6 of his petition, the Petitioner indicated that his proposed employment in the United States is a bullpen catching coach. In response to the Director's request for evidence (RFE), the Petitioner submitted an undated letter, explaining that he had demonstrated "his extraordinary ability, both as a player and as a bullpen catching coach." On appeal, the Petitioner concludes that he has shown his extraordinary ability as a baseball catcher and coach.

In *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the court upheld a finding that competitive athletics and coaching are not within the same area of expertise, stating "extraordinary ability as a baseball player does not imply . . . extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach. The regulations regarding this preference classification are extremely restrictive, and not expanding 'area' to include everything within a particular field cannot be considered unreasonable." *Id.* at 918. While a baseball player and a baseball coach certainly share knowledge of the game of baseball, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. *See Lee*, 237 F. Supp. 2d at 918; *see also Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, No. 2:10-CV-440 (S.D. Ohio Sept. 14, 2015). Nevertheless, there does exist a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise comprises coaching, however, would be too speculative. To resolve this issue, as noted in the Petitioner's appellate brief, the following balance is appropriate. In a case where the beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, USCIS can, in the context of the final merits determination, consider the totality of the record as establishing an overall pattern of sustained acclaim and extraordinary ability consistent with a conclusion that coaching is within the beneficiary's area of expertise. Specifically, in such a case the level at which the beneficiary acts as coach is a consideration. A coach who has a successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. In this case, however, the Petitioner has been coaching for many years. Regardless, as the Petitioner has not submitted qualifying documentation as either a coach or an athlete under at least three criteria, the proper conclusion is that the Petitioner has not satisfied the regulatory requirement of three types of evidence.

B. Prior P-1 Approvals

While U.S. Citizenship and Immigration Service (USCIS) has approved at least one P-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. The regulatory requirements for an immigrant and nonimmigrant visa in the athletics are different. The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) provides that an athlete may be approved a nonimmigrant visa upon a showing that he "is an internationally recognized athlete based on his or her own reputation and achievements as an individual." The regulation at 8 C.F.R § 214.2(p)(3) defines "internationally recognized" in athletics as "having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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." As such, the petitioner's approval for a nonimmigrant visa under the standard of "having a high level of achievement . . . substantially above that ordinarily encountered" is insufficient to demonstrate his eligibility for an "extraordinary ability" immigrant visa.

C. Evidentiary Criteria[1]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or shown that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize or an Olympic Gold Medal. As such, the petitioner must present at least three of the ten types of documentation 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

On appeal, the Petitioner asserts that he meets this criterion because he received a number of awards and notable recognition, including the District Junior Championship 1980, Champion Catcher; Leading Hitter Award 1985; [redacted] Manger Award 1988; [redacted] MVP Award 1991; and Big League World Series Runner-Up 1994. Although the Petitioner has established his receipt of prizes and awards, he has not shown that the prizes and awards are nationally or internationally recognized, as required by the plain language of the criterion.

First, as the Director noted in his decision, the Petitioner received many of his prizes and awards as an amateur baseball player and these were given only to individuals of certain age groups. Although prizes and awards that are limited to certain skill levels and/or age groups may nonetheless qualify as nationally or internationally recognized prizes or awards, the Petitioner must provide sufficient evidence to demonstrate that his particular prizes and awards meet this criterion. Other than photographs of trophies, plaques and award certificates, the Petitioner has submitted limited information on the recognition of his prizes or awards. The record includes an online printout entitled "Big League Baseball Division," stating that boys and girls between ages of 15 and 18 may participate in the Big League Baseball Division and that the Big League Baseball World Series is an international tournament that features Big League Baseball Division teams from around the world. This document contained information relating to the Big League Baseball Division, in which the Petitioner had achieved certain level of success. The document, however, does not contain information relating to the reputation of the Petitioner's prizes or awards received during his time as a baseball player in the division.

To meet this criterion, the petitioner must show that the prizes and awards are recognized outside the entities that presented the prizes or awards. The Petitioner's filings lack such evidence. Specifically, the petitioner has not submitted documentation showing that his receipt of these prizes or awards has been reported in nationally circulated publications. The record includes an October 1990 [redacted] article, entitled "[The Petitioner] [redacted] in Final Phase of the Summer

[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.

League."[2] The Petitioner has not submitted evidence showing that was a nationally circulated publication in 1990, when it published the article. Rather, the record includes a document from Publicitas, noting that in 2010, , a business publication, is nationally distributed in Venezuela with a weekday circulation of 40,000 copies. Moreover, this article relates to the Petitioner's award received 24 years before the filing date as an athlete, not a coach.

Second, as noted in the Director's decision, although the record includes evidence that the Petitioner has received employee service awards and awards that recognize the Petitioner's contributions or services to certain organizations, the Petitioner has not shown that this recognition meets the criterion. While it shows that certain organizations appreciated the Petitioner's work and efforts, it does not establish that the recognition is internationally or nationally recognized, outside of the organizations that issued the awards.

Third, on appeal, the Petitioner states that he was a member of teams that won the in 1987 or 1988, and the Minor League Baseball Championships between 1990 and 1993. The Petitioner has not shown that winning these competitions constitutes nationally or internationally recognized prizes or awards. Although the Petitioner has provided a article entitled noting that the is an annual postseason tournament between champions of the winter leagues, the Petitioner has not submitted evidence showing that there has been any media attention on the teams that won the in 1987 or 1988, or that won the Minor League Baseball Championships between 1990 and 1993. Moreover, these awards predate the petition by more than 20 years and relate solely to his achievements as an athlete.

Finally, the Petitioner has submitted Wikipedia entries entitled and As there are no assurances about the reliability of the content from this open, user-edited Internet site, we will not assign evidentiary weight to information from Wikipedia.[3] *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). In light of the above, the Petitioner has not established that he meets this regulatory criterion.

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[2] As noted by the director, the copy of the article does not contain the portion of the paper that includes the name of the publication; rather, it appears handwritten on the copy.

[3] Online content from Wikipedia is subject to the following general disclaimer entitled "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 . . . .

> *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.*

On appeal, the Petitioner asserts that he meets this criterion because he is employed by the [redacted] he is a member of the [redacted], and he is a uniformed personnel in Major League Baseball. The Petitioner has not shown that he meets this criterion. Participation in the major leagues alone is not qualifying for this classification. *Muni v. INS*, 891 F.Supp. 440, 443-44 (N.D. Ill. E.D. 1995).

First, the Petitioner has not shown that his employment with the [redacted] meets this criterion. Although the Petitioner has been employed by the baseball team since 2004, the record lacks information relating to the criteria under which he was selected to the team, or that one of the selection criteria is "outstanding achievements," "as judged by recognized national or international experts." According to a December 12, 2014 letter from [redacted] Senior Vice President and General Manager of the [redacted] the team hired the Petitioner as its bullpen catcher from 2004 through 2006, as its assistant bullpen coach and bullpen catcher in 2007, and as its bullpen catching coach since 2008. On appeal, the Petitioner discusses [redacted] competitive achievements. At issue for this criterion, however, are not an association's achievements; rather, the Petitioner must show that the association requires outstanding achievements from its members. In addition, the Petitioner has not submitted evidence showing that employment is a membership in an association, as the term is used in the criterion.

Second, the petitioner has not shown that the [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts. The petitioner provided online printouts from the [redacted] including a printout entitled "FAQs." The "FAQs" printout states: "Anyone who has served as a player, manager, umpire, scout, trainer, and certain front office personnel for any professional baseball club in Organized Baseball." Those in major and minor leagues are eligible to become an [redacted] member. The petitioner has not submitted evidence showing that involvement with major and minor league baseball teams constitutes "outstanding achievements." According to an October 23, 2014 [redacted] article entitled [redacted] "[o]nly 10 percent of the 6,000 minor league players ever make it to the majors, where the minimum salary is $500,000." Although this article contained information relating to the frequency of minor league players joining the major league, it did not have information relating to how one becomes a player in the minor league or a "manager, umpire, scout, trainer" or "certain front office personnel," in either the minor or major league, which are individuals who are eligible to become [redacted] members. Without such material, the Petitioner has not shown that the [redacted] requires outstanding achievements from its members.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on September 25, 2015, a copy of which is incorporated into the record of proceeding.

On appeal, the Petitioner states that "[h]aving a contract with a major league baseball team is an outstanding achievement that forms the basis of membership in the [redacted] and cannot be minimized or discounted as a mundane formality like paying a membership fee." As provided in the "FAQs" online printout, although a major league player is eligible to become an [redacted] member, others who are not a major league player, i.e., minor league players or other individuals involved with baseball, are also eligible to be an [redacted] member. The Petitioner has submitted insufficient information showing that [redacted] requires "outstanding achievements" from all of its members. In addition, the record lacks evidence showing that "recognized national or international experts" judge potential members as required by the plain language of the criterion.

Third, the Petitioner has not shown that his status as a major league uniformed personnel meets this criterion. On appeal, the Petitioner states that there is a difference between "uniformed" and "non uniformed" personnel who support a major league baseball team. The Petitioner further notes that "individuals have earned the right to wear the uniform based on [their] outstanding accomplishments either as a player, coach, or both." The Petitioner has not cited to any exhibit in support of his assertions. The record lacks information relating to how someone becomes a major league uniformed personnel or evidence showing that to become a major league uniformed personnel, the individuals must show "outstanding achievements." In addition, the Petitioner has not provided information on, nor is it specified on the face of the identification card, the entity that confers uniformed personnel status. Without such information, the petitioner has not shown that the entity constitutes an association as the term is used in the criterion or that status as uniformed personnel is a membership in an identifiable association.

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

On appeal, the Petitioner asserts that articles from [redacted] establish that he meets this criterion. The Petitioner has not shown that materials from these publications meet this criterion. First, on appeal, the Petitioner has not specifically challenged the Director's finding that only a few articles in the record are about the Petitioner. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

In addition, the evidence supports the Director's finding as relating to this issue. Most of the articles relate to certain baseball games in which the Petitioner participated or certain baseball teams of which the Petitioner was or is a member. For example, the record includes an October 1990 [redacted] article entitled [redacted]

; an October 1990 article entitled ; a July 1990 article entitled [The Petitioner] ; a November 1983 article entitled ; an undated article entitled "[The Petitioner] ; a 1983 article entitled a 1981 article entitled ; a 1983 article entitled ' ; and a 1990 article entitled [The Petitioner] The Petitioner has not shown that these articles are about the Petitioner, because the focus of the articles was on certain baseball games or teams, rather than on the Petitioner. These articles make limited specific reference to the Petitioner. Other than reporting on the Petitioner's performance in the games and/or his association with the teams, the articles did not provide additional information relating to the Petitioner or his work.

Second, the exhibits do not support the Petitioner's assertion that published an article about him. The record includes a June 2010 article entitled "[The Petitioner]: which a journalist for had authored. The petitioner has not submitted any evidence showing that published this article. In addition, the petitioner has not provided material showing that is a professional or major trade publication or other major media.

Third, although the Petitioner included a article entitled [the Petitioner]," which is about the Petitioner, the Petitioner has not shown that the a general interest newspaper, constituted major media in 2006. On appeal, the Petitioner files two 2006 articles from indicating that newspaper circulation continued to decline. The articles stated that in October 2006, the daily circulation was 212,075, and its Sunday circulation was 354,966. The Petitioner has not shown that such circulation level in 2006 was indicative of the newspaper's status as major media. The Petitioner also submitted a May 2012 article, noting that in 2012 the and its websites reach more than 1 million people every week," however, the information relates to status in 2012, not in 2006, when it published "Q&A: [the Petitioner]." Moreover, the Petitioner has not demonstrated whether this newspaper is distributed or circulated in significant numbers outside of

Fourth, the record includes a 2004 newspaper article entitled [The Petitioner] According to an online printout from Publicitas, in 2010, was distributed only in Venezuela's , and had weekday circulation of 65,000 copies and Sunday circulation of 150,000 copies. The Petitioner has not submitted the circulation information relating to this general interest newspaper in 2004, when the newspaper published the article about the Petitioner. Regardless, the information reveals the paper is local to

Fifth, on appeal, the Petitioner indicates that articles published in and meet this criterion. As noted, the Petitioner has not challenged the Director's finding that

these articles are not about the Petitioner. While at least one of the articles in [redacted] focused on the Petitioner, the material from Publicitas indicates that paper is local to [redacted]

Finally, although the record includes articles not specifically discussed above, as the Petitioner has not maintained on appeal that these articles meet this criterion, the Petitioner has abandoned this issue. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9. Moreover, a review of these articles does not indicate that they meet the criterion, as they are neither about the Petitioner nor published in a professional or major trade publication or other major media.

In light of the above, the Petitioner has not established that he 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 eligibility for this regulatory criterion. On appeal, the Petitioner has not specifically challenged the Director's finding, or asserted that he meets this criterion. Accordingly, the Petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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

On appeal, the Petitioner asserts that he meets this criterion because he performs a leading or critical role for the [redacted] As supporting evidence he points to letters from [redacted]; a 2007 article entitled '[redacted] posted on [redacted] and [redacted]. The Petitioner has not shown that he meets this criterion. Specifically, he has not shown that he performs either a leading or critical role for the [redacted]

To establish that he meets this criterion, the Petitioner must show that he has performed either a leading or a critical role for an organization or establishment that has a distinguished reputation. A leading role should be evident based not only on the petitioner's title but his duties associated with the position. A critical role should be apparent from the petitioner's impact on the entity as a whole. To show his role, the petitioner may submit an organization chart demonstrating how his role fits within the hierarchy.

[redacted] authored two letters in support of the Petitioner. In his December 2014 letter, [redacted] stated that the Petitioner is the team's bullpen catching coach, which is a "specialized position that only a few can achieve." [redacted] indicated that the Petitioner "has achieved this position due to his extraordinary ability to coach pitchers and to assist the pitching coach." In his August 21, 2014 letter, [redacted] explained that the Petitioner "has a vast and diverse source of knowledge, skill and experience from which to draw on in making coaching decisions and in training players." Both letters praised the Petitioner's skills and abilities, neither letter, however, discussed the Petitioner's impact of the petitioner's role in the [redacted] as a whole, or how the Petitioner's role as a bullpen catching coach fits within the hierarchy of the [redacted]

In his August 2014 letter, indicated that made it to post-season play in 2013 and [the Petitioner] played a major role in the team reaching that level, and [the team] expect[s] even greater accomplishments in [2014]." Although stated in general terms that the Petitioner's "bilingual skills, knowledge, energy and enthusiasm have helped both [the team's] pitchers and catchers improve their skills," neither of his letters provided details relating to what impact the Petitioner's role as a bullpen catching coach has had on the team, such that he performs a critical role for the as a whole, or how his role fits within the hierarchy of the team, such that he performs a leading role for the team as a whole.

Similarly, an August 19, 2014 letter from Community Relations Director, did not establish that the Petitioner meets this criterion. According to the Petitioner participated in the team's community events, and served as a mentor, liaison and translator to the team's Spanish-speaking players. further noted that the Petitioner "is an asset to this country and will continue to be a contributing member of society." did not provide detail information on what impact the Petitioner has had on the team as a whole, such that his role could be considered as critical, or how the Petitioner's role fits within the hierarchy of the team, such that his role could be considered as leading.

On appeal, the Petitioner references an article entitled "Bullpen Catchers – How They Impact a Baseball Game and the Team." The Petitioner, however, has not provided a copy of the article. As such, his reference to the article does not establish that the Petitioner meets this criterion. In addition, general information relating to bullpen catchers and their impact on a game and/or a team does not constitute specific evidence showing whether or how the Petitioner performs either a leading or critical role for the

Finally, the Petitioner submitted other reference letters, including those from , Former Manager of the and a baseball catcher for the Major League Baseball Team. On appeal, the Petitioner has not maintained that these reference letters establish that he meets this criterion. In addition, these reference letters contained general praise of the Petitioner's abilities and character, but did not provide specific evidence showing that the Petitioner has performed either a leading or critical role for the In light of the above, the Petitioner has not satisfied the requirements of this regulatory criterion.

D. Summary

The record shows that the Petitioner achieved success as an amateur baseball player in the 18 years and younger category, he was a catcher in a Minor League Baseball Team, and he has worked first as a bullpen catcher, then as a bullpen catching coach for the Although the Petitioner has been involved in the sport of baseball for years, for the reasons discussed above, we agree with the Director that he has not submitted the requisite initial evidence, in this case, documentation that satisfies three of the ten regulatory criteria. Having reached this conclusion, we will not address other issues the Petitioner raised on appeal, including whether the Petitioner's entry into the United States will substantially benefit prospectively the United States.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show 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 included 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 submissions 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 satisfying the initial documentation 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 record in the aggregate supports a finding that the Petitioner has not documented 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of H-J-A-*, ID# 13771 (AAO Sept. 28, 2015)

[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 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).