MATTER OF K-L-

DATE: FEB. 9, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a canyoneering guide, seeks classification as an "alien of extraordinary ability" in 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 petition; the matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

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. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On Form I-290B, Notice of Appeal or Motion, the Petitioner makes general assertions such as the adjudicating officer did not properly review the documents, did not take into consideration the explanations, and applied the wrong legal standard without explaining, for example, how the adjudicating officer improperly reviewed the documents, what explanations the officer did not consider, and which legal standard the officer incorrectly applied. Furthermore, the Petitioner indicates in Part 3 of Form I-290B that he would be submitting a brief to us within 30 days of filing the appeal. In addition, the Petitioner submits a cover letter stating that he will "submit [his] brief in support of this appeal within thirty days." As of the date of this decision, however, we have not received anything further. Accordingly, the record is considered complete as it now stands, and we will render a decision based on the record of proceeding. 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:

> (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 have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth two different methods by which a petitioner can demonstrate extraordinary ability sustained by national or international acclaim and recognition of achievement in the field. First, a petitioner can submit a one-time achievement (that is, a major, internationally recognized award). Second, a petitioner can meet at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of the initial requirements does not however, 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 our 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 we 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 we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria[1]

Documentation of the alien's 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 Director determined that the Petitioner's membership with the did not meet the eligibility requirements for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation 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." In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding the Petitioner initially submitted a September 29, 2012, letter from General Secretary of who stated that the Petitioner is a founding member and is a member of the rescue team. In addition, the Petitioner submitted an August 15, 2012, letter from President of who stated that the Petitioner is a "founding and special member" of and listed the "special member" requirements:

- Received at least instructor level or higher training from accredited Nepal based or foreign based canyoning organization or school,
- Advance level mountaineering and rescue training,
- Minimal understanding and/or research experience in national or international level of canyoning,
- Participated or led the group 4th level or higher waterfall canyoning exploration or expedition,
- Contributed in development and promotion of canyoning,
- Ability, experience, and recognized in rescue operation,
- At least five years national or international experience in canyoning,
- Have anchored and canyoneered at least 15 canyons above 4th grade, and
- Only upon recommendation of the expert committee, the applicant will be granted special membership by the executive committee.

[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.

The Petitioner also submitted the "Statute of the 2007" that does not, however, indicate a "special member" classification. The statute lists six membership categories: general member, lifelong member, honorary member, institutional member, founder member, and outstanding level member. Regarding outstanding level membership, the requirements are as follows:

- The person obtained training [in] more than instructor level in the Canyoning field from the recognized native and foreign Organization,
- The person obtained outstanding training and First Aid training relating to mountaineering and emergency rescue,
- The person carried out probable study and research relating to development of Canyoning in national and international level,
- The person led or participated in Canyoning Exploration and Expedition in waterfall above fourth level in national and international level,
- The person provided outstanding contribution for development and promotion of Canyoning in higher mountain and waterfall,
- The person obtained skill, experience and famous [sic] in emergency work,
- The person obtained extra-ordinary success in national and international level by obtaining experience of at least 5 years in Canyoning, and
- A Committee consisting [of] five out of members of . . . shall provide outstanding level membership to the person having above-mentioned qualification[s].

Although the outstanding level membership requirements contain some similarities to "special member" designation, the Petitioner did not demonstrate that he has an outstanding level membership. Neither nor indicated that the Petitioner held such membership status. Moreover, the Petitioner did not establish that he has "special member" status as statute does not contain this membership classification.

In response to the director's request for evidence (RFE), the Petitioner submitted an April 21, 2013, letter from an April 20, 2013, letter from and an April 22, 2013, letter from current President of Regarding 2013 letter, first name is shown as " whereas previous letter reflected his first name as " " We also note that seal on the letters in response to the RFE is different from the letters at the initial filing. The record does not contain any explanations for these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, 2013 letter and 2013 letter asserted that the Petitioner is one of the co-founders of and "also serves as an Executive Member." Neither 2012 letter nor 2012 letter made any mention of the Petitioner's "Executive Member" status. In addition, although statute references a "Working Committee," "Canyoning [sic] Rescue Work Sub-Committee," "Advisory Committee," and "Election Committee," there is no mention of an "Executive Committee." As such, the Petitioner has not established that he is an "Executive Member" of Moreover, according to letter, the Petitioner was selected as an executive member on the basis of his expertise and contribution and "[n]o expert's advisory opinion was required

for him because his expertise is well known." Even if the Petitioner demonstrated the existence of "Executive Member" status, which he did not, the Petitioner did not submit any documentary evidence reflecting the requirements for executive membership status, so as to establish that outstanding achievements are required for membership. Moreover, as the Petitioner's executive membership was never judged by experts, the Petitioner does not meet the plain language of this regulatory criterion.

In his 2013 letter, "confirm[s] the process followed to grant Specialized Skill Membership to [the Petitioner]." His letter thus indicated the Petitioner's membership status was not "Special Member" but rather "Specialized Skill Membership." According to statute, there is no membership classification for "Special Member" or "Specialized Skill Membership." The Petitioner has not resolved these inconsistencies with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. In addition, neither nor mentions this special membership in their letters.

Nevertheless, according to 2013 letter, the Petitioner's "Specialized Skill Membership" was reviewed by French experts: Although the Petitioner submitted a recommendation letter from at the initial filing of the petition, makes no mention of the Petitioner's membership with and the Petitioner's "Special Member" or "Specialized Skill Membership" status, or that he reviewed the Petitioner's membership application as asserted by

Even if the Petitioner established that he has special membership status with , which he did not, the requirements asserted by 2012 letter, as well as outstanding level membership reflected in statute, do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, the Petitioner has not demonstrated that outstanding achievements are required for membership with as judged by recognized national or international experts in their disciplines or fields. According to letter, "the applicant will be granted special membership by the executive committee." Notwithstanding that the statute makes no mention of an executive committee, the Petitioner did not establish that the executive committee is comprised of national or international experts who judge whether an applicant has demonstrated outstanding achievements to become a member of the association. Furthermore, the requirements listed by such as completing a minimum number of training levels or having a certain amount of hours of experience are not reflective of outstanding achievements consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Regarding the Petitioner, in response to the Director's RFE, submitted a May 6, 2013, letter from Convener for the who confirmed the Petitioner's membership and stated that he is part of the and was recommended by to serve on the committee. Although letter provides a brief history of he did not indicate that membership requires outstanding achievements or that membership is judged by recognized national or international experts. The Petitioner did not submit any other documentation to establish that his membership with meets the eligibility requirements of the plain language of the regulation at 8 C.F.R. §204.5(h)(3)(ii).

Accordingly, the Petitioner did not establish that he meets this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The Director determined that the Petitioner did not establish eligibility for this criterion. Specifically, although the Petitioner submitted a few published articles that were about him, the Director found that the Petitioner did not demonstrate that they were in professional or major trade publications or other major media.

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." In general, in order for published material to meet this criterion, it must be about the petitioner 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. 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."

At the initial filing of the petition, although the Petitioner submitted articles from that mention the Petitioner, they are not reflective of published material "about" him. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In addition, while the Petitioner submitted supporting letters from Deputy New Editor for and Editor/Managing Director for who indicated that the articles were authored by "our correspondents" and "the editorial team," they do not sufficiently identify the authors and therefore do not meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, the Petitioner did not submit any documentation regarding *The Rising Nepal's* publication status.

Moreover, the Petitioner submitted articles from the that qualify as published material about him and relating to his work, but the Petitioner has not demonstrated that the periodicals are professional or major trade publications or other major media. At the initial filing of the petition, the Petitioner submitted an August 12, 2012, letter from Director General of the Department of Information, who provided circulation statistics for five of the leading national publications in Nepal, including The letter indicates the newspapers have a circulation of 250,000, 200,000, 100,000, and 95,000, respectively. The remaining newspaper had a circulation of 80,000. The Petitioner also submitted an August 13, 2012, letter from Nepal, General Secretary of the

regarding the sales volume for various publications including The sales volumes are consistent with the letter from and further show sales of of 10,000.

In response to the Director's RFE, the Petitioner submitted an April 25, 2013, letter from and an April 25, 2013, letter from General Secretary of A review of the letters reflects inconsistent information. For instance, April 12, 2012, and April 25, 2013, letters contain different signatures, and the August 13, 2012, letter from and the April 25, 2013, letter from reflect grammatical errors and at least three variations of the spelling for in the letterheads, seals, and in the bodies of the letters.[2] These irregularities diminish the credibility of the evidence. The Petitioner did not submit any other documentation regarding these publications and has not resolved these discrepancies. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, the Petitioner did not submit any documentation regarding as well as discussed above.

letter asserted that "is one of the highest selling newspapers of the country and has a national circulation of 30,000." His statement differs from the letters from who make no mention of and the Petitioner has not demonstrated that 30,000 in sales are reflective of being a major trade publication or other major medium. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. In addition, letter indicated that has a circulation of 5,000 and is one of "the top selling magazines in Nepal." The Petitioner has not established that such circulation statistics are representative of a major medium and did not offer any evidence of other magazine sales in Nepal as a comparison.

For the reasons discussed above, the Petitioner did not establish that the articles appeared in professional or major trade publication or other major media as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Accordingly, the Petitioner did not establish that he meets this criterion.

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 established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." A review of the record of proceeding

[2] For example, is listed as "

reflects that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the Petitioner established that he 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 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 regulatory criterion. As such, we must withdraw the Director's findings 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." Here, the evidence must rise to the level of original contributions "of major significance in the field." According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003).

The Petitioner indicated eligibility for this criterion based on the submission of a few recommendation letters. For instance, the previously discussed letters from as well as letters from President of the Senior Officer for the indicate that the Petitioner discovered Nepal's canyoneering potential in Nepal by identifying waterfalls and exploring canyons, which "made [a] very important addition to the list of adventures that Nepal can offer."

Although the letters credit the Petitioner with opening up canyoneering to adventurers in Nepal, they do not reflect that the Petitioner has made original contributions of major significance to the field as a whole. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the original contributions be "of major significance in the field." The Petitioner has not demonstrated how his identifying waterfalls and exploring canyons in Nepal has impacted or influenced the field of canyoneering as a whole. Although we acknowledge the Petitioner's work in canyoneering in Nepal, the Petitioner has not established that his work has risen to the level "of major significance in the field" consistent with this regulatory criterion. *Cf. Visinscaia v. Beers*, 4 F.Supp.3d at 134-135 (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).

Moreover, the letters repeat the regulatory language and indicate that the Petitioner's contributions are "significant" and "outstanding" without explaining how the Petitioner's contributions are of major significance in the field. Vague, solicited letters that repeat the regulatory language but do not

explain how the petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The letters considered above primarily contain bare assertions of the Petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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, *1, *5 (S.D.N.Y. Apr. 18, 1997). Without supporting evidence, the Petitioner has not met his burden of establishing that his present contributions are of major significance in the field. Moreover, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The opinions of the Petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, F. Supp.3d at 134-135 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Without additional, specific evidence showing that the Petitioner's contributions have been unusually influential, widely applied throughout the field, or has otherwise risen to the level of major significance, the Petitioner has not demonstrated that he meets the plain language of this regulatory criterion. Therefore, we withdraw the findings of Director for this criterion, and find the Petitioner did not establish that he 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 his 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." In general, a leading role is evidenced from the role itself, and a critical role is one in

which the individual contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

The Petitioner claims eligibility for this criterion based on his role with and refers to the previously discussed letters from who indicated that the Petitioner is one of the co-founders and "Executive Member" of that the Petitioner is in charge of the technical aspects of and that the Petitioner serves as the coordinator of the rescue committee.[3] The Petitioner also asserts eligibility for this criterion based on his role with and refers to the previously discussed letter from who indicated that the Petitioner serves on the mountaineering rescue committee.

The letters, however, do not provide sufficient information to demonstrate that the Petitioner performed in a leading or critical role for or The letters make general statements without providing specific information establishing that the Petitioner's role is leading or critical. There is no evidence, for example, showing how the Petitioner's role as an "Executive Member," coordinator of the rescue committee, or member of the mountaineering rescue committee differentiates the roles of the other members of so as to demonstrate that the Petitioner's role is leading or critical. Furthermore, compared to who is the president of the organization, the Petitioner's role as coordinator of a committee is not reflective of performing in a leading role for Similarly, simply serving on a committee within is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The lack of specific information provides no basis to gauge whether the roles of the Petitioner with is leading or critical.

As previously discussed, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, the ultimate responsibility for making the final determination of an individual's eligibility for the benefit sought rests with USCIS. *Id.* The submission of letters of support from the Petitioner's personal contacts is not presumptive evidence of eligibility, and USCIS may evaluate the content of those letters to determine if they support the eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence.

Although the letters asserted that the Petitioner's role with were leading and critical, they do not reflect that the Petitioner performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's roles were critical are not persuasive evidence. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *see also Avyr Associates, Inc. v. Meissner, No. 95 CIV. 10729, at *5.*

[3] We previously discussed the inconsistencies regarding the Petitioner's "Executive Member" status under the membership criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the organizations or establishments "have a distinguished reputation." At the initial filing of the petition and in response to the Director's RFE, the Petitioner asserted that " is a well known organization with distinguished reputation" and "both organizations have distinguished reputation[s]." Nonetheless, the Petitioner provided no documentation to establish the reputation of the or the 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The burden is on the petitioner to establish that it meets every element of this criterion. Without documentary evidence demonstrating that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Petitioner has not demonstrated that he meets the plain language of this regulatory criterion.

Accordingly, the Petitioner did not establish that he 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 eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field."

The Petitioner submitted the previously discussed letter from who stated that the Petitioner "commands [the] highest compensation for his services." The Petitioner also submitted an October 5, 2012, letter from who asserted that the Petitioner earns between 4,500 and 7,500 rupees per day. In addition, the Petitioner submitted a June 23, 2012, letter from Managing Director for the who indicated that the Petitioner has a daily allowance of 5,400 rupees compared to three other individuals who have daily allowances of 4,800, 3,700, and 3,200 rupees. Furthermore, the Petitioner submitted an August 28, 2012, letter from Managing Director for who stated that the Petitioner has a daily allowance of 6,000 rupees while three other guides have daily allowances of 5,000, 3,500, and 3,000 rupees. Moreover, the Petitioner submitted an August 20, 2012, letter from who indicated that the Petitioner earns a daily allowance of 5,500 rupees compared to three other guides whose daily allowances are 5,000, 3,500, and 3,000 rupees.

The Petitioner did not submit any evidence supporting the job letters, such as earning statements or tax documents. Nonetheless, the plain language of this regulatory criterion requires that the Petitioner commands a high salary "in relation to others in the field." We are not persuaded that the

Petitioner's submission of salaries or earnings from a limited and specific selection demonstrate that he has commanded a high salary when compared to others in his field. While the documentary evidence reflects that the Petitioner earns a higher salary than the those identified by [redacted] and [redacted] the petitioner did not demonstrate that he has commanded a high salary when compared to others in his field as a whole rather than a selective list of positions with specific organizations. Even comparing his salary to the other guides, the Petitioner's salary is barely higher than the other guides and is not reflective of commanding a high salary relative to others in the field.

The record contains no objective earnings data showing that the Petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *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). In the present case, the evidence the Petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

Accordingly, the Petitioner did not establish that he 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. CONTINUE TO WORK IN THE AREA OF EXPERTISE

Although not addressed by the Director in his decision, the Petitioner did not establish his intent to continue to work in his area of expertise in the United States as required by section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

Section 203(b)(1)(A)(ii) requires that the petitioner "seeks to enter the United States to continue work in the area of extraordinary ability." The regulation at 8 C.F.R. § 204.5(h)(5) states:

> Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner submitted an October 24, 2012, letter at the initial filing of the petition that briefly stated that he has "worked with the [redacted] and other

Canyoning climbs and agencies in the past in Nepal," and he is "very confident that [he] will not encounter any difficulty in securing [a] professional job as a canyoneer in the United States." According to the regulation at 8 C.F.R. § 204.5(h)(5), the petitioner must submit "clear evidence" and his statement must detail his plans on how he intends to continue his work in the United States. The Petitioner's letter, however, lacks specific information to establish his plans to continue to work in his field of expertise. The petitioner did not submit, for example, any other documentation, such as letters from prospective employers or any evidence of prearranged commitments such as contracts, reflecting evidence that he is coming to the United States to continue work in the area of expertise.

For the reasons discussed above, the Petitioner has not submitted "clear evidence" that he intends to continue in his area of expertise in the United States pursuant to section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(h)(5).

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that a petitioner 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.

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. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-L-*, ID# 12715 (AAO Feb. 9, 2016)