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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 2 2013

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 classification as an "alien of extraordinary ability" in the sciences, specifically in the area of public health, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits an appeal brief, along with evidence, some of which counsel is offering for the first time. Counsel maintains that the petitioner has met eight of the ten evidentiary criteria outlined in the regulations, of which the petitioner must satisfy only three.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(I)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Certification and Translation

As an initial matter, the petitioner has submitted documents, some of which are in Spanish, at various stages of these proceedings. "Petitioners and applicants for immigration benefits are required by

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

regulation to provide certified English translations of any foreign language documents they submit." *Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (citing 8 C.F.R. § 103.2(b), now promulgated at 8 C.F.R. § 103.2(b)(3)) which states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS).

While not specifically addressed by the director in his decision, the petitioner submitted numerous translations that were not each accompanied by a certified translation in accordance with the regulation, provided only partial translation of a document, or failed to include a translation along with the foreign language document. Such deficiencies preclude the petitioner from meeting the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, any foreign language document demonstrating deficiencies in translation or certification of translation is not probative evidence.

B. Evidentiary Criteria[2]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director determined that the petitioner submitted four awards for consideration under this criterion: [redacted] and [redacted] The director concluded that such awards do not meet the regulatory requirements because they appear to have been received while the petitioner was pursuing an education. In addition, the director clarified that the petitioner's honors do not meet the language of the regulation because those types of awards are restricted to students or early career professionals in the field.

On appeal, in response to the director's findings, counsel asserts that the petitioner received the above honors after completion of her degree in medicince. Nonetheless, many of the above awards are either specifically age restricted or generally conferred on physicians who are still in training programs such as an internship, residency, or a fellowship program. Such restrictions or limitations have the effect of excluding established professionals who have already achieved excellence in the field of endeavor.

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

While an age-restricted award could conceivably still be nationally or internationally recognized, the record does not contain evidence indicating that any of the awards are so recognized. The failure to include evidence of national or international recognition of the awards results in the failure to satisfy a critical plain language requirement of the regulation. On appeal, counsel describes the group of awards as "nationally recognized prizes" and states that the Best Intern Physician Award was an "an award designated annually at national level." However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirerz-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, at issue is not whether the pool of competitors is national or international but whether the prize or award itself is nationally or internationally recognized in the field.

Accordingly, the petitioner has failed to satisfy the plain language requirements of 8 C.F.R. § 204.5(h)(3)(i).

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner submitted evidence of various memberships in support of this criterion in support of the initial I-140 petition and in response to the director's Request for Evidence (RFE). The director, in the denial decision, specifically discussed the petitioner's evidence as a and an as well as a for the The director determined that the evidence submitted relating to all these memberships indicates that the petitioner's membership status had expired.

On appeal, counsel asserts that the petitioner retains active membership to some of the associations that the director discusses in the denial and submits new evidence on appeal. The AAO will consider these memberships below. Regarding the memberships previously documented that counsel does not address on appeal, the petitioner has abandoned any claims that those memberships are qualifying. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

As evidence that the petitioner retains status as an counsel on appeal submits a purported webpage from that organization's membership directory page, along with the associated translation of the webpage contents. Counsel also submits a copy of the bylaws relating to the requirements for becoming an Associate Member, along with the associated translation. The requirements for Associate Members as outlined by the bylaws are limited to education, residence, absence of sanctions, recommendations and the payment of dues. Thus, the society does not require outstanding achievements of their associate members, as judged by recognized national or international experts.

Counsel also submits on appeal a letter from President of the purportedly stating that the petitioner was a Principal Member between 1998 and 2005, and appointed as an Honorary Member since 2006 to date. However, the record does not contain evidence indicating that outstanding achievements are required to either be admitted as a Principal Member or an Honorary Member of the organization.

The final document that counsel submits on appeal in support of this criterion is a letter from and President and Secretary, respectively, of the The letter states that the petitioner is an Active Member of the organization. The petitioner, however, has failed to include documentation showing that outstanding achievements are a requirement for gaining Active Membership in the or that the club is an association in the petitioner's field. Moreover, both of the above mentioned letters are written in Spanish and while the petitioner submitted translations with the originals, she failed to include certifications of translation, as required by 8 C.F.R. § 103.2(b)(3).

For all of the above reasons, the petitioner has failed to satisfy the requirements of 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.* 8 C.F.R. § 204.5(h)(3)(iii).

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner's work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Initially, counsel asserted that the petitioner had appeared on television and was "a regular contributor of articles and interviews." The petitioner submitted photographs of herself on television and foreign language articles with partial, uncertified translations. The director's RFE listed deficiencies in this evidence and counsel's response and appellate brief do not address this initial evidence. As such, the petitioner has abandoned any claim that this evidence satisfies this criterion. *See Sepulveda,* 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

In response to the RFE and again on appeal, counsel references the petitioner's participation in writing a document titled,

The director determined that the submitted evidence did not meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii), largely because the guidelines are not about the petitioner.

On appeal, counsel submits the above mentioned guidelines with a related translation. Counsel further maintains that while the document does not bear the name of the petitioner, a letter that counsel re-submits on appeal attests to the fact that the petitioner served on a committee that drafted the " " At the outset, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and published material about the alien in professional or major trade publications or other major media, USCIS clearly does not view the two as being interchangeable.[3] To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Thus, there is no presumption that the petitioner's own work product is published material for purposes of 8 C.F.R. § 204.5(h)(3)(iii).

Additionally, counsel on appeal has failed to address the director's basis for denial with respect to this criterion. Counsel on appeal does not respond to the director's finding that the submitted evidence in this instance is not "about" the petitioner. Counsel also does not respond to the director's determination that there is nothing in the record to indicate that the submitted document is found in a professional or a major trade publication or other major media. After a review of the translation of the submitted document, the AAO concludes that the contents are not "about" the petitioner and there is no supplemental evidence to indicate that the document in question appeared in a professional or a major trade publication or other major media.

Consequently, the petitioner has failed to meet the plain language requirements of the regulation.

> *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.* 8 C.F.R. § 204.5(h)(3)(iv).

The director determined that the petitioner failed to meet this criterion. On appeal, counsel asserts that USCIS failed to discuss two of the three examples of evidence of the petitioner's participation as a judge. Specifically, counsel asserts that the petitioner participated as a judge in her capacity as 1) a 2) a Member of the and 3) the

[3] Publications and presentations, properly addressed under 8 C.F.R. § 204.5(h)(3)(vi), are not also sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS,* 580 F.3d at 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

Andes. The supplemental evidence that counsel submits on appeal describes the duties for a Member of the and the

The petitioner also submitted the bylaws outlining the duties of the The bylaws, however, submitted on appeal are in Spanish and while there is an associated translation submitted along with the original, there is no accompanying certification of translation as required by 8 C.F.R. § 103.2(b)(3). Therefore, the bylaws have minimal weight as probative, credible evidence pursuant to this criterion. Nonetheless, the description of the petitioner's duties as a which includes arbitrating and making appraisals of professionals and medical facilities, indicates that the petitioner participated as a judge of the work of others.

Thus, the AAO withdraws the director's determination in this regard and concludes that the petitioner submitted sufficient evidence to satisfy this criterion.

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

The director concluded that the petitioner failed to meet this criterion. In making his determination, the director considered letters of support from the following individuals: Titular Professor at the General Coordinator and Vice President at Coordinator of Graduate Operating at and Director at the The director ultimately found the above letters to be insufficient evidence of the petitioner's original contributions of major significance in the field.

On appeal, counsel characterizes some of the petitioner's specific accomplishments as original contributions of major significance. Counsel, however, does not raise a legal or factual challenge regarding the director's conclusions relating to the above letters on appeal and the AAO concludes that the petitioner abandoned any claims under this criterion relating to those letters. *See Sepulveda,* 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

Counsel asserts that the following accomplishments constitute original contributions of major significance: creation of a state chapter of the research to prevent intra-hospital post-surgical infections at the participation as a speaker on cardiovascular education and as a health professional in a bi-national conference; research to implement a in the rural community of and various presentations on coronary artery disease in multiple conventions.

All of the above mentioned contributions either impacted a specific institution, a local community or region, or specific conventions. The record does not provide sufficient detail regarding the impact of each of these contributions to establish that they were of major significance in the field. The truth is to

be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989).

Counsel further references the petitioner's research projects between 1993 and 2001 and notes the importance of the petitioner's area of research. The importance of the petitioner's area of research alone cannot establish the actual impact of her research such that it is a contribution of major significance in the field. While the petitioner received some recognition for some of this research, the record lacks evidence of its ultimate impact in the field upon being disseminated in the field.

Counsel also asserts that the petitioner developed and implemented cardiovascular disease preventive programs at the national level and references two letters from President of the and the

In his September 21, 2007 letter, writes: "[The petitioner] . . . has done an excellent work in the field of Cardiovascular Prevention in developing and implementing national and regional preventive programs . . . ." In his February 14, 2012 letter, states that: "[The petitioner] is a Public Health Professional of extraordinary ability, which has been demonstrated throughout [sic] her sustained nationally recognized achievements in the cardiovascular health promotion and disease prevention field." These two letters primarily contain bare assertions of acclaim and vague claims of contributions without providing specific examples of how those contributions rise to a level consistent with major significance in the field. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, 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). Finally, vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[4]

Accordingly, the petitioner has failed to satisfy the plain language requirements of 8 C.F.R. § 204.5(h)(3)(v).

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

The director determined in his decision that the petitioner met this regulatory criterion and the AAO affirms the director's determination relating to this criterion.

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[4] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."[5] Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden,* 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director in the denial decision considered evidence relating to the petitioner's respective roles at the [redacted] the [redacted] and the [redacted] The director determined that the petitioner failed to provide sufficient details regarding the tasks she performed and concluded that the submitted evidence failed to meet the requirements of this criterion.

On appeal, counsel asserts that the petitioner performed in a leading or critical role in her capacity as a Medical Director for the [redacted] and as a Coordinator of Cardiovasular Disease Preventive Programs at the [redacted] To substantiate the claims regarding the role at the [redacted] counsel references a letter from [redacted] confirming the petitioner's position as the Medical Director, and a letter from [redacted] briefly describing the petitioner's duties. However, the letters do not provide sufficient details to conclude that the petitioner served in a leading or critical role for the organization as a whole. Specifically, the evidence does not show how the Medical Director fits within the overal hierarchy of the organization or explain how the petitioner impacted the organization in this role.

Counsel references a document of certification from [redacted] to substantiate the claim of a leading or critical role at the [redacted] However, the document from [redacted] merely states the petitioner's titles at that organization and provides no information regarding the petitioner's role. Counsel provides additional descriptions of the petitioner's work on behalf of the organizations, but as noted earlier, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirerz-Sanchez*, 17 I&N Dec. at 506. Once again, the evidence does not show where the petitioner's roles fit within the overall hierarchy of the organization or how the petitioner impacted the organization within her roles.

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[5] *See* http://www.merriam-webster.com/dictionary/distinguished, accessed on February 4, 2013.

In addition, the petitioner has failed to include evidence establishing that either the are organizations that have a distinguished reputation. Finally, all of the evidence that the petitioner submitted on appeal in support of this criterion was in Spanish and while there was a translation for each of the documents, the petitioner failed to submit a certification of the translator's competency, as required by 8 C.F.R. § 103.2(b)(3).

For all of the above reasons, the petitioner has failed to establish her eligibility under 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.* 8 C.F.R. § 204.5(h)(3)(ix).

The director concluded that the petitioner failed to meet this criterion because she failed to submit any documentary evidence relating to her compensation as a Medical Director and did not include any documents providing comparative data with others who work in similar roles in the field. On appeal, counsel submits a document titled, for physicians working in Counsel asserts that the petitioner received a significantly high remuneration for services relative to other physicians because the petitioner received compensation as a physician in addition to the compensation that she received for her administrative duties as a Medical Director. The petitioner needs to demonstrate that she has received significantly higher pay in comparison to other physicians who, like the petitioner, also held the role of Medical Director to satisfy this criterion. Specifically, the petitioner must present evidence of objective earnings data showing that she 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 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).

Furthermore, the document showing the salary information is in Spanish and like much of the other evidence offered up on appeal, fails to meet the requirements of 8 C.F.R. § 103.2(b)(3), because there is no accompanying certification of the translator's competence. Therefore, the petitioner has failed to meet this criterion.

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

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 the 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[ir] 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. While the AAO concludes that the evidence (much of which predates the petition by several years) is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[6] Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[6] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains 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* section 103(a)(1) of the Act; section 204(b) of the Act; 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).