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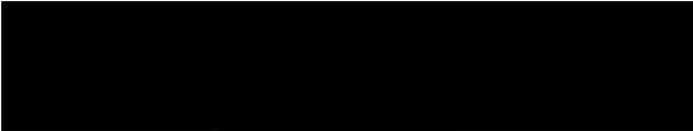
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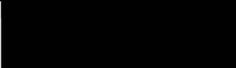
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 09 2007

EAC 05 195 51783

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability.¹ 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.

On appeal, counsel argues that the petitioner “has sustained national and international acclaim and that his achievements are recognized in the field through extensive documentation.”

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.

Citizenship and Immigration Services (CIS) 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* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term “extraordinary ability” means 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. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on June 22, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a “writer and poet.” The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained

¹ The petitioner was initially represented by attorney Philip Stoffer. In this decision, the term “previous counsel” shall refer to Philip Stoffer.

national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" 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." 8 C.F.R. § 204.5(h)(2). As discussed below, we find that the petitioner's evidence is not sufficient to meet any of the criteria at 8 C.F.R. § 204.5(h)(3).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted an award certificate stating:

Rawal Theater
Rawalpindi (Pakistan)
Present [sic]
This Award
to
Best Drama Writer
[The petitioner]
on his experimental Play [sic]
"A letter to God"
Staged on July 13, 1998

[signature]

Chairperson

The petitioner also submitted an award certificate from the "Institute of Urdu Language New York" stating: "This Certificate is Awarded to Well Known Poet of New Era [the petitioner] on His Best Book of 2004 'TAWAAN.'"

On February 23, 2006, the director issued a request for evidence noting that the record lacked evidence demonstrating "the significance of these prizes" and instructing the petitioner to submit evidence of his receipt of recent prizes or awards including a statement from the institutions that granted the awards commenting on the number of awards given, the criteria for granting the awards, and the number of individuals eligible to compete for the awards.

In response, the petitioner submitted a letter dated "4-5-2006" from [redacted], Director of Performing Arts, Rawal Theatre, Pakistan, stating:

It is certified that [the petitioner] was awarded best script of Drama “A letter to God,” staged and presented in the “Festival of Experimental Dramas 98.” At Liaquat Memorial Hall, Rawalpindi, under the auspices of Rawal Theatre, in Jul: 1998 [sic].

Rawal Theatre is very active and popular section of “LIGHT” (NGO) to create the awareness in the masses through stage drama/skits.

Six different Drama groups from [redacted] and [redacted] presented their plays under the following titles in Urdu and Punjabi languages:

- 1) Tanhaee (Lonliness) [sic] New Trend Theatre Group — Peshawar.
- 2) Aag men Phool (Roses in Fire) Sunshine Drama Group — Azad Kashmir.
- 3) A Letter to God, Art Circle, Islamabad.
- 4) Saline ki Kahani (A story of Salma) Tamseel Group, Lahore.
- 5) Waris Shah kahan ho (Waris Shah, Where you are?), Natak, Rawalpindi.
- 6) Men kyun Ro Raha hoon (Why I am crying) Raj Theatre, Wah.

The prominent TV and stage artists [redacted] and [redacted] were the honorable judges.

After the week long festival, the judges announced the following name[s] for award with the cash prize of Rs.5000/- each.

- 1) [redacted] Best Director & Producer (Roses in Fire)
- 2) [redacted] Best writer, (A letter to God)
- 3) [redacted] Actress (A letter to God)
- 4) [redacted] Best Actor (Lonliness) [sic]

Thus, out of the six drama groups participating in the event, three received awards. The petitioner’s response included no information regarding the criteria for granting the preceding best drama script award. Nor is there contemporaneous evidence of national or international recognition associated with the petitioner’s award.

The petitioner’s response also included a May 15, 2006 letter from [redacted] President, Institute of Urdu Language New York, stating:

Institute of Urdu language (Urdu Markaz New York) was established in 1989, to promote the literary and cultural values and working towards the International recognition of Urdu language. The organization initially confined its activities by holding Mushairas, (Poetry recitation) Seminars, Lectures and special evening with poets, writers and singers and awed by the over whelming response to it [sic].

Urdu Markaz awarded [the petitioner] as a best Urdu poet of the year 20004 [sic] on his newly published book "Tawan" (Collection of his poetry).

Contrary to the instructions in the director's request for evidence, the petitioner's response included no information indicating the criteria for granting his award or the number of awards given. Nor is there contemporaneous evidence of national or international recognition associated with the petitioner's award.

The petitioner also submitted photographs of the following:

1. Plaque dated November 20, 2005 from [redacted] Islamabad, Pakistan "in recognition of [the petitioner's] outstanding contribution to promote Urdu Literature abroad & On his Third Poetry Collection 'TAWAAN.'"
2. Plaque dated December 6, 2005 from [redacted] Pakistan stating that the petitioner received a "Best Overseas Pakistani Poet of 2005 Award . . . For his Excellent Poetic Services in North America & Pakistan[.]"

We note that items 1 and 2 above were issued to the petitioner subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider these certificates in this proceeding.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* and it is his burden to establish every element of this criterion. Regarding the petitioner's awards from the Rawal Theater and the Institute of Urdu Language New York, we find that these awards reflect institutional recognition rather than national or international recognition. In this case, the petitioner has not shown that his two awards commanded significant recognition beyond the presenting organizations. For example, there is no evidence such as national press coverage surrounding the petitioner's awards or other evidence of national or international recognition of the awards.

In light of the above, the petitioner has not established that he meets this criterion.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievements of its members.

On appeal, counsel asserts that the petitioner "submitted his membership card of the International Congress of Writers, Artists & Intellectuals." The record, however, includes no such evidence, nor was the membership card identified in the petitioner's lettered listing of exhibits submitted to CIS. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503,

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506 (BIA 1980). Moreover, there is no evidence that admission to membership in the preceding organization required outstanding achievements, as judged by national or international experts in the petitioner's field. Therefore, the petitioner has not established 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.

In general, in order for published material to meet this criterion, it must be primarily 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. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country's population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted articles appearing in publications such as *Daily Dawn*, *Star*, *Muslim*, *The News*, *Pakistan Times*, *Times Mag New York (Urdu Times Weekly Magazine)*, and *Daily Din*. We note that the foreign language articles submitted by the petitioner, such as the articles in *Times Mag New York*, were not accompanied by English language translations as required by both the regulation at 8 C.F.R. § 103.2(b)(3) and the plain language of this criterion. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that 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. Further, there is no evidence that the preceding publications are professional, major trade publications or other major media.

Regarding the published material in *Times Mag New York*, although a proper English language translation was not submitted, this material appears to be written by the petitioner rather than being "about" the petitioner. Such material does not satisfy the plain regulatory language of the criterion. In response to the director's request for evidence, the petitioner submitted two April 27, 2006 letters from Khalil-ur-Rehman, Editor and Publisher, *Urdu Times*, Jamaica, New York. The first letter states: "I offered [the petitioner] to work with Urdu Times as a freelance journalist, he accepted our offer and wrote for the culture and literary section in *Urdu Times Weekly Magazine (Times Mag)* for the past two years." Even if the petitioner were to submit proper English language translations showing that the materials in *Times Mag New York* were "about" him, it has not been shown that this periodical is a form of major media. In that regard, Khalil-ur-Rehman's second letter states:

Urdu Times is North America's first Urdu newspaper, as well as the largest circulated Urdu publication in the world outside of Pakistan. . . . Urdu Times extended the area of publication by

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Prince William County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

adding cities and is now publishing simultaneously out of New York, Washington, D.C., Atlanta, Miami, Detroit, Chicago, Houston, Los Angeles, Toronto, Montreal, London, Birmingham, Manchester; and is still growing. Currently, *Urdu Times*' circulation exceeds 80,000 copies worldwide.

It has not been established that *Urdu Times* newspaper and *Times Mag New York (Urdu Times Weekly Magazine)* are one in the same. Further, because Urdu is not the predominant language in the United States, Canada, or Great Britain, it has not been shown that an article appearing in this publication constitutes published material in "major media." Appearance in a publication read by only a small segment of a country's population, whether in the United States, Canada, or Great Britain, is not evidence of national or international acclaim.

On appeal, the petitioner submits materials printed from the internet sites of *pakistanlink.com*, *nazariapak.info*, and *theamericanmuslim.org*. The two articles posted on the former two internet sites only mention the petitioner's name once in passing and are not primarily about him. The latter internet site posted one of the petitioner's poems among those of numerous other poets. This posting represents material written by the petitioner rather than material "about" the petitioner. Finally, the record includes no evidence showing that the preceding internet sites have substantial national or international readership or otherwise constitute major media.

In light of the above, the petitioner has not established 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" 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." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for professional writers is of far greater probative value than judging a local competition for students or amateurs.

In response to the director's request for evidence, the petitioner submitted a March 13, 2006 letter from [REDACTED], Station Director, Pakistan Broadcasting Corporation, Lahore, stating:

[The petitioner] participated in various "[REDACTED] (Poetic Gatherings) organized by Radio Pakistan and received immense appreciation from general listeners and his contemporaries, as well. He has another quality of considering all artistic works on Merit Basis. Radio Pakistan engaged him in several occasions as adjudicator and he adjudged the contestants on merit.

Previous counsel states that the preceding letter is evidence showing that the petitioner “participated as Judge in 1998 for All Pakistan Youth Mushaira (Poetry Recitation) arranged by Pakistan Broadcasting Corporation, Lahore (Radio Pakistan).” [REDACTED]’s letter, however, does not state that the petitioner participated as a judge at an “All Pakistan Youth” contest, nor does it specify the year of 1998. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506.

The petitioner also submitted a letter dated “05-12-05” from [REDACTED] Director, Pakistan National Council of the Arts, stating: “It is certified that [the petitioner], Deputy Director, Pakistan National Council of the Arts was designated as Judge in the National Drama Festival 1994 under the auspices of Pakistan National Council of the Arts.”

We do not find that the preceding letters from [REDACTED] and [REDACTED] are adequate to demonstrate that the petitioner meets this criterion. The plain language of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” Primary evidence of the petitioner’s participation is of far greater probative value than letters of support prepared several years after the competitive contests occurred. In this instance, there is no evidence of, for example, the names of the individuals evaluated by the petitioner, their level of expertise, the specific literary works judged, or any other documentation of the petitioner’s assessments (such as judging slips, event programs identifying him as a judge, or a judge’s credential from the events). The record also lacks supporting evidence establishing the significance of the events at which the petitioner served as a judge (such as national media coverage surrounding the contests). The benefit sought in the present matter, however, is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. See section 203(b)(1)(A)(i) of the Act. The regulations governing the present immigrant visa determination have no requirement mandating that CIS specifically accept the credibility of personal testimony, even if not corroborated. The commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Without substantive evidence of the petitioner’s participation as a judge of the work of others in his or an allied field that is consistent with national or international acclaim, we cannot conclude he meets this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In response to the director’s request for evidence, previous counsel simply asserted that the petitioner’s freelance work for *Urdu Times*, his work as a compiler, his poetry, plays and dramas were sufficient to meet this criterion. On appeal, counsel asserts that the several letters of support submitted by literary experts in the field show the recognition associated with the petitioner’s work. In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS 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. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of

letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a poet or writer who has sustained national or international acclaim. Given the statutory requirement for "extensive documentation" and the ten regulatory criteria requiring specific evidence of accomplishments, we must conclude that evidence in existence prior to the preparation of the petition generally carries greater weight than new materials prepared especially for submission with the petition.

While the petitioner's letters of support attest to his talent, describe his activities, and list his work, they do not establish that the petitioner's artistic contributions are of major significance to the field. For example, the letter from [REDACTED], Adjunct Instructor, Urdu, Department of Middle Eastern Studies, New York University, states:

[The petitioner] is a well-known progressive poet of Urdu language from Pakistan. Three collections of his poems, *Khwab Azaab Hu'e (Dreams Become Torture - 1992)*, *Neend Musafir (Sleep Traveler - 1995)*, and *Taa'van (RANSOM - 2004)*, have been very well received in Pakistan and among Urdu readers in India and the USA.

As a poet, [the petitioner] has voiced the longings of the people of Pakistan for democracy and freedom. He has spoken out against fundamentalism and worked to minimize ethnic and sectarian tensions in Pakistan. He regards it as a responsibility of the intellectual to bring up these issues and problems. He has worked for the freedom of press and improvement of relations between India and Pakistan by making efforts to communicate with Indian writers. He has supported the creative efforts of other writers and poets of Urdu in India and Pakistan by compiling three anthologies of short stories and three collections of poetry and has further served the writing community by compiling the *Directory of Writers and Poets of Pakistan (1980)*.

Additional letters of support from individuals such as [REDACTED] and [REDACTED] offer similar descriptions of the petitioner's work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). The record here does not establish that the petitioner's work has made scholarly or artistic contributions of major significance to his field in a manner consistent with sustained national or international acclaim.

In evaluating the reference letters, we note that letters containing mere assertions of acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. We do not question the evaluations of the petitioner's talent and the quality of his writing. The statute and regulations, however, do not permit us to make subjective evaluations of literary talent. At issue overall is whether the petitioner has made original, major contributions to his field in a manner consistent with sustained national or international acclaim. The petitioner has not submitted evidence showing his influence on other writers or journalists; that the literary

field has somehow changed as a result of his work; that his work is routinely assigned in literary, political science, or Urdu culture courses nationwide; or that he has otherwise made original contributions of major significance to his field in a manner indicative of sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his authorship of three books of poetry. These books of poems by the petitioner are literary works rather than “scholarly articles . . . in professional or major trade publications or other major media.” The record also includes no evidence that the publication of the petitioner’s books is consistent with or indicative of sustained national or international acclaim. For example, there is no evidence indicating the number of copies in circulation, the number of copies sold, or the scope of the petitioner’s readership. In regard to the petitioner’s journalistic articles, we note that they were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner has not established that these articles were “scholarly” or that they were published in major media.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

In response to the director’s request for evidence, previous counsel indicated that this criterion was not applicable. On appeal, counsel does not specifically challenge the director’s finding that this criterion has not been met.

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

In response to the director’s request for evidence, previous counsel indicated that this criterion was not applicable. On appeal, counsel does not specifically challenge the director’s finding that this criterion has not been met.

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

In addressing the petitioner’s evidence for this criterion, the director stated: “The record contains a ‘pay slip’ from the Pakistan National Council of the Arts for 2000. However, there is no comparative evidence to establish that the [petitioner] has enjoyed compensation in excess of that enjoyed by others in the field.” The plain language of this criterion requires the petitioner to submit evidence of a “high salary . . . in relation to others in the field.” On appeal, the petitioner submits no evidence that his compensation was significantly high in relation to others in his field. Thus, the petitioner has not established that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner submitted letters of support and other documentation showing his work as a playwright for television, radio, and onstage productions and as a lyricist for musical recordings. This criterion calls for evidence of commercial success in the form of “sales” or “receipts”; simply submitting evidence indicating that the petitioner has worked as a playwright or lyricist cannot meet the plain language of this criterion. For example, the petitioner has submitted no evidence of ticket sales for the onstage productions for which he wrote scripts or compact disc sales for the songs that he wrote. The record includes no evidence of documented sales, receipts, or other similar evidence showing, for example, that the petitioner’s plays were regular sell-out performances or had substantial attendance, that his radio and television broadcasts attracted a substantial national audience, that the songs he wrote had a high national or international sales volume, or that he otherwise achieved commercial success in a manner consistent with sustained national or international acclaim.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: “*If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.*” [emphasis added]. This regulation allows for the submission of “comparable evidence,” but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, previous counsel and the petitioner have argued that eight of the regulatory criteria apply to the petitioner’s field. Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. On appeal, although counsel does not specifically request consideration pursuant to 8 C.F.R. § 204.5(h)(4), we will briefly address counsel’s arguments regarding certain documentation that has not already been discussed under the ten criteria at 8 C.F.R. § 204.5(h)(3) and how this documentation is not adequate to demonstrate the petitioner’s sustained national or international acclaim.

The petitioner’s response to the director’s request for evidence included photographs of a sketch of the petitioner. On appeal, counsel states: “[redacted] one of Pakistan’s leading painters, has made sketches of select literary figures [The petitioner’s] sketch hangs along with other sketches at the picture gallery of Pakistan Academy of Letters in Islamabad.” The record, however, includes no evidence establishing the reputation of [redacted] or the Pakistan Academy of Letters. Nor is there evidence from this institution specifically identifying the section in which the petitioner’s sketch hangs or the requirements for an individual’s sketch being included in its gallery.

The petitioner also submitted evidence showing that he has participated in various poetry-recitation programs throughout his career. In regard to the petitioner's poetry presentations, we note that the record contains no documentation demonstrating that participation in poetry readings is unusual in the petitioner's field or that the invitation to present at events where the petitioner appeared was a privilege extended to only a few top writers. Nor is there evidence distinguishing the petitioner from the other program participants, such as evidence showing that the petitioner's poetry presentations commanded an unusual level of attention, that he headlined the programs, or that he has served as an event moderator in the same manner as [REDACTED] who, according to evidence submitted by the petitioner, moderated at the Fourth People's Poetry Gathering in New York in 2006.³

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.

³ We note that the petitioner's participation in this event occurred subsequent to the petition's filing date. As stated previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider the evidence of the petitioner's participation in this event in this proceeding.