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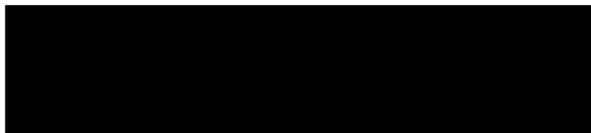
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: AUG 09 2007
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Beneficiary: [REDACTED]

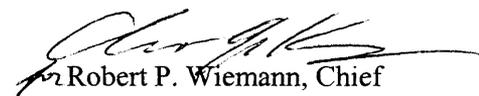
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. 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. The director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States.

On appeal, the petitioner argues that she qualifies for classification as an alien of extraordinary ability and that the director's "arguments are groundless and incorrect."

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 she has sustained national or international acclaim at the very top level.

This petition, filed on January 30, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a "Philosopher – Orientalist." On appeal, the petitioner states: ". . . since January 15, 2002 I am the researcher working for Scientific Doctor's degree." A January 6, 2006 certificate issued by the "Institute of Philosophy and Law 'I. Muminov'" in Tashkent, Uzbekistan states: "This is to certify that [the petitioner]

from January 15, 2002 is the Researcher working for Doctor's Degree in Department of Sociology and Political Sciences”

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained 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). The petitioner has submitted evidence pertaining to the following criteria.

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 response to the director's request for evidence, the petitioner a certificate of membership from the New York Academy of Sciences (NYAS) conferred to her in March 2006. The record, however, includes no evidence of the membership bylaws or official admission requirements for this organization. There is no evidence showing that admission to membership in the NYAS required outstanding achievement, as judged by recognized national or international experts in the petitioner's field. Further, as noted by the director, the petitioner “became a member subsequent to the filing of the petition.” 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 this membership in this proceeding.

On appeal, the petitioner states: “The fact that somebody achieves more success after submitting a petition does not eliminate the importance of added evidences.” The petitioner further argues that the “immigration process is long one but life is very dynamic” and that the findings set forth in *Matter of Katigbak* are “outdated.” The petitioner's statements are not persuasive. This binding precedent sets forth a fundamental rule of immigration law obliging a petitioner to demonstrate that he or she is eligible for the requested visa classification as of the date that the petition is filed. This requirement serves an important function in that it encourages fairness for all applicants, by preventing one unqualified person from filing a petition simply to secure a priority date ahead of other qualified candidates. This tenet also encourages the efficient administration of the immigration laws and prevents unqualified applicants from clogging the system with speculative petitions. It is a fundamental requirement that an alien be eligible for a benefit at the time of filing. In addition to *Matter of Katigbak*, it has been held in the case of other preference visa petitions for employment-based immigrants that the alien must be fully qualified at the time the petition is filed. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg. Comm. 1977). *See also Matter of Great Wall*, 16 I&N. Dec. 142, 145 (Reg. Comm. 1977). There are similar precedents for fifth preference immigrant investor petitions, family-based petitions, and nonimmigrant petitions that do not have degree requirements or require labor certifications, but were held to the same reasoning as that in *Matter of Katigbak*. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc.

Comm. 1998); *Matter of Bardouille*, 18 I&N Dec. 114, 116 (BIA 1981); and *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

By law, the director does not have the discretion to reject published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all CIS officers. To date, neither Congress nor any other competent authority has overturned *Matter of Katigbak*, and the petitioner's disagreement with that decision does not invalidate or overturn it. Therefore, the director's reliance on relevant, published, standing precedent and the regulation at 8 C.F.R. § 103.2(b)(12) does not constitute error.

In light of the above, the petitioner has not established that she 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, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating the work of graduate or undergraduate students.

On appeal, the petitioner challenges the director's finding that "[t]he record does not contain evidence to establish that this criterion has been met." The petitioner calls attention to the January 6, 2006 certificate issued by the "Institute of Philosophy and Law 'I. Muminov'" in Tashkent, Uzbekistan stating that she was a "member of the Institute's Academic Council." This brief statement includes no information regarding the nature of the petitioner's participation as a judge of the work of others and therefore it is not adequate to demonstrate that she meets this criterion. In this instance, there is no evidence showing the names of the individuals evaluated by the petitioner, their level of expertise, the specific work judged, and the paperwork documenting her evaluations. The absence of contemporaneous evidence of the petitioner's participation as a judge is a significant omission from the record. The record also lacks supporting evidence establishing the level of prestige associated with serving on the Institute's Academic Council. 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. Further, 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 showing that the petitioner participated in judging other professionals in a manner consistent with sustained national or international acclaim, we cannot conclude she meets this criterion.

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

The petitioner submitted several letters of recommendation in support of her petition.

[REDACTED], Professor of the National University of Uzbekistan "M. Ulughbeg," states:

[The petitioner] in 1996 defended dissertation thesis for degree of Candidate of Sciences, in the Institute of Philosophy and Law, where I worked in position of Director.

* * *

[The petitioner] displayed both her oratorical mastership and deep intellect and logic consistency, thirst for new solution of complicated historic and philosophic problems.

Wide outlook of her knowledge and serious scientific background displayed with more depth later, in her numerous appearances, papers and references for candidate dissertations.

[The petitioner] is an active scientist, who frequently appears in mass media of Uzbekistan with articles dedicated to the burning issues of socio-philosophical thoughts in Uzbekistan.

The fact she is now collecting materials and investigates the problems of sociophilosophical background of "Avesta," is the evidence of the own way of the scientist, who is guided by high-minded targets of philosophic science of the Republic. I am sure this work will constitute not only a scientific achievement by [the petitioner], but also the Uzbekistan philosophy in general.

Regarding the preceding observations of [REDACTED] about the possible future implications of the petitioner's current work, we note that the petitioner must demonstrate that her work has already had a discernable major impact upon "Uzbekistan philosophy in general" in order to meet this criterion. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49. As stated previously, aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

[REDACTED], Professor, Tashkent State Technical University, states:

[The petitioner] was my post-graduate student. I was in charge of her Dissertation thesis for degree of Candidate of Sciences. From the first days of her studies in the post-graduate training course she proved herself as a searching young scientist having wide scientific outlook. When [the petitioner] worked over her dissertation, I could note that she got a very serious philosophical education, that she was interested in insufficiently known issues of History and theory of problems of Philosophy and Aesthetics. The defense of her dissertation thesis on the theme "Jadid Movement in Turkestan and Its Importance for Development of Moral and Aesthetic Conceptions," became a new burst in investigation of spiritual renaissance and development of people.

As scientific adviser, I am proud of my student, who considers her work in Philosophy as the sense of her life.

Being an experienced and thoughtful scientist [the petitioner] is engaged in research of the ancient sources of religious, philosophical, moral and aesthetic conceptions of the Central Asian peoples.

Every publication by [the petitioner], every appearance in scientific conferences are evidences of the high level of her scientific potential. She is an uncommonly gifted person amongst the scholars working in social studies, especially amongst female philosophers.

While the petitioner's philosophical and aesthetic research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scholarly community. Any Ph.D. thesis, or research findings, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every scholar who performs original research that adds to the general pool of knowledge has inherently made a contribution of *major* significance to the field as a whole. We must presume that the phrase "major significance" contained in the regulation at 8 C.F.R. § 204.5(h)(3)(v) is not superfluous and, thus, 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). In the field of philosophy, it is not enough to simply publish and present one's work and have others attest to such accomplishments. An alien must have demonstrably impacted the field as a whole in order to meet this criterion.

Professor, University of the World Economy and Diplomacy, states:

Once [the petitioner] started to work in the University of the World Economy and Diplomacy, in particular, in the Chair, of which I am the Chief, I got a chance to become more acquainted with her scientific and creative plans and abilities. During the recent years she managed to prove herself as a serious and thorough scientist and exigent pedagogue. Her articles dedicated to the history of Jadid movement, also to philosophic theoretical issues of Jadid aesthetics, testified that [the petitioner] was a researcher with a great future and of outstanding gifts.

In the University of the World Economy and Diplomacy she was the Chairman of the "Tutors' Council," also she designed the curriculum in the subjects "Fundamentals of Spiritual Wealth" and "Cultural Sciences," she actively participated in the conferences dedicated to such topics as "Spiritual Wealth and Ideology," "Law and Duty," and others. [The petitioner's] article "Historic Background of the National Ideology" was published in the University magazine. Deep knowledge of history and philosophy of the people was displayed by the author of the article.

[The petitioner] is a scientist with a very promising future. Presently she is involved in study of socio-philosophical essence of "Avesta," which was never investigated by the scientists of Uzbekistan.

[REDACTED], Professor, Academician of the Academy of the Humanities, Academician of the International Academy of Informatization [sic], and Vice-president of the International Academy of Empirical Aesthetics, states:

The last century end was marked with the appearance of a number of scientists in the Union Republics (former USSR), whose scientific and aesthetic thinking was predominant feature of their creative potential. Such tendency was strengthened after independence of these Republics.

In connection therewith I paid attention to some articles and thesis of an Uzbek young scientist, [the petitioner], dedicated to the law-researched problems of the Oriental philosophical ideas.

Her research work in the theory and history of Djadid movement in Turkestan was a new scientific achievement in the sphere of social-philosophical ideas in the Central Asia.

Her last publications on philosophy of Zoroastrianism, as well as moral-and-aesthetic contents of "Avesta" certified that [the petitioner] saturated herself in a subject of cognition of the religion, the philosophy and the spiritual heritage of the Oriental countries.

I suppose that she will gain an altitude in her research activity, if she enriches her knowledge with the most recent literature and carrying out of research works in the oriental philosophy abroad.

The preceding observations from [REDACTED] and [REDACTED] that the petitioner has a promising future do not establish eligibility, for the regulations clearly c [REDACTED] ce that she has already made an original contribution of major significance in the field. For example, [REDACTED] states that the petitioner's published and presented work is evidence of the "high level of her scientific potential," [REDACTED] describes the petitioner as "a scientist with a very promising future," and [REDACTED] offers the supposition that the petitioner "will gain an altitude in her research activity, if she enriches her knowledge." Such observations, however, cannot meet the extremely high threshold of extraordinary ability. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. See 8 C.F.R. § 204.5(h)(2). We further note that the achievements of many the petitioner's references indicate that the top of the petitioner's field is a level above her own level of achievement.

The letters of support from the remaining witnesses, [REDACTED] and [REDACTED], focus mainly on the petitioner's published and presented papers.

[REDACTED] Professor of Philosophy and Deputy of the Legislative Assembly of Oliy Majlis (Parliament) of the Republic of Uzbekistan, states:

I am acquainted with [the petitioner] through her publications and appearances in scientific conferences dedicated to the issues of moral and spiritual improvement of individual.

Her articles "Aesthetic Culture" (1993), "On Classification of Jadid Movement" (1993), "Aesthetics of Sidqiy Khondaylikiy" (1994), "Issues of Spiritual Demand (1989), "Aesthetic Fundamentals of

Chulpon's Work" (1998), Philosophic Fundamentals of Zoroastrism" (2001), as well as her reports made in the Republican Scientific Conference (June 18-21, 1986), in the Conference dedicated to the urgent issues of Philosophy (May 26, 1995), in the 4th Republican Conference dedicated to the urgent philosophic issues of the sovereign Uzbekistan (May 30, 1997), the 5th Republican Scientific Conference (1998), were the evidence of the fact that amongst the female philosophers a researcher with a wide range of knowledge and scientific interests had appeared.

[The petitioner's] articles are always rich in facts and ideas, they discover new layers of history of the national Philosophy.

Professor and Chancellor of Tashkent Institute of Arts [redacted], states:

I have met [the petitioner] in scientific conferences and could be a witness of her thorough scientific philosophical papers. Her speeches always examine burning academic issues related to spiritual renaissance and development of the Uzbek people.

Being a specialist in the issues of ethnoculture of the Uzbek people, in every possible way I support her scientific research of social and philosophic grounds of "Avesta."

The holy book of Zoroastrism, which had appeared in Khoresm territory, is the evidence of the sources of both religious and philosophic and moral culture of the peoples of Central Asia.

The articles and scientific papers by [the petitioner] are evidences of her thorough knowledge of the history of Philosophy, of the new approach to investigation of the most complicated issues concerning social philosophy and history of Aesthetics.

[The petitioner] is a gifted researcher having wide outlook of knowledge and scientific interests.

[redacted] Academician of the Academy of Sciences of Uzbekistan and Chairman of the Philosophical Society of Uzbekistan, states:

I am acquainted with [the petitioner] through her publications dedicated to Jadid movement in Turkestan and its importance for development of moral and aesthetic conceptions.

In view of rehabilitation of the Jadid movement in Turkestan, [the petitioner] started to appear with extremely substantial articles in mass media and papers in scientific conferences. I have noted that a thoughtful scientist was shaping in our philosophic science.

In 1996 [the petitioner] brilliantly defended her thesis for degree of Candidate of Sciences, thus she displayed as a gifted scientist. On a very high theoretical level she managed to examine complicated issues related to the life and creative work of Jadids in the beginning of the 20th century.

Nowadays, she researches socio-philosophical background of the ancient monument of human civilization "Avesta." This is a new tendency in development of philosophy in Uzbekistan.

[REDACTED] Middle East Cataloger, The University of Chicago Library, states that he has “known [the petitioner] since 1990.” [REDACTED] further states:

I can personally vouch that [the petitioner] is a scholar of extraordinary abilities and skills. He [sic] has already made a name for himself [sic] among philosophers of Uzbekistan. [The petitioner] is the author of several scholarly articles, which have a great theoretical and practical importance. Specialists already regard them as great contributions to the field.

I am more than sure that [the petitioner’s] research and expertise are of great importance. His [sic] research work provides us with better understanding of Central Asian Intellectual History and Civilization.

The philosophical papers published and presented by the petitioner relate to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the articles authored by the petitioner under the next criterion.

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. For example, in the present case, we note that several of the petitioner’s recommendation letters were written by her professors and supervisors. Such letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of her affiliated institutions. 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 philosophical scholar who has sustained national or international acclaim. Given the statutory requirement for “extensive documentation” and the ten regulatory criteria requiring specific objective evidence of achievements, we must conclude that evidence in existence prior to the preparation of the petition is of greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

In evaluating the reference letters, we do not question the evaluations of the petitioner’s talent and the quality of her published and presented work. The statute and regulations, however, do not permit us to make subjective evaluations of a scholar’s talent. At issue here is whether the petitioner has made an original contribution of major significance in her field. In this case, the petitioner has not submitted objective

evidence showing her influence on other scholars or philosophers, nor is there evidence showing that the field has somehow changed as a result of her work. For example, the petitioner has not established that her work is routinely assigned in social philosophy or aesthetics history courses nationwide. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that her work rises to the level of a contribution of major significance. Thus, the petitioner has not established that she 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 her authorship of articles appearing in publications such as *Sovereign Uzbekistan: Urgent Issues of Philosophy, Guliston* magazine, and *Nafosat* magazine. The petitioner, however, failed to submit full English language translations for her published articles. 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. The petitioner's documentation for this criterion does not meet these requirements. Further, there is no evidence showing that the preceding publications, or any publications in which the petitioner's work has been published, have substantial national or international circulation to such an extent that they qualify as professional or major trade publications or other major media. Thus, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major internationally recognized award, or that she 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.

As stated previously, the director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States. On appeal, the petitioner addresses the director's finding by stating: "I had already submitted the certificate that since January 15, 2002 I am the researcher working for Scientific Doctor's degree. The Scientific Doctor's degree is higher than a highest scientific degree in the United States – Ph [sic] Doctor degree. So, aforesaid [sic] is evidence that I am continuing my career as a scientist." The certificate mentioned by the petitioner, however, relates to her activities in Uzbekistan rather than specifying how the petitioner will continue her work in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "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 record includes no such evidence.

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