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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2007
WAC 02 225 50418

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on January 12, 2006. The matter is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the petition will be remanded for further action and consideration.

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 submitted clear evidence that he is coming to the United States to continue work in the area of expertise. The director also stated that the record includes a Form I-130, Petition for Alien Relative, "which appeared to be based on a fraudulent marriage," thus subjecting the petitioner to the fraudulent marriage prohibition set forth in section 204(c) of the Act.

On appeal, counsel disputes the director's conclusion that the petitioner's previous marriage to a United States citizen is subject to the provisions of section 204(c) of the Act.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582, 590.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

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[1] The petitioner was initially represented by attorney [redacted] In this decision, the term "previous counsel" shall refer to [redacted]

> Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) states:

> *Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The record reflects that the petitioner married Ann Maniaul in the Philippines on November 17, 1995. The couple had two children born in the Philippines on March 29, 1996 and October 7, 1998. The petitioner entered the United States as a B-2 nonimmigrant visitor for pleasure on January 29, 2000 and has resided in this country since that time. A Decree of Divorce from Clark County, Nevada reflects that [redacted] and the petitioner divorced on March 14, 2001. Sixteen days later, on March 30, 2001, the petitioner married [redacted], a naturalized United States citizen from the Philippines, who was eighteen years his elder. On May 2, 2001, [redacted] filed a Form I-130 petition seeking to classify the petitioner as the spouse of a United States citizen. The Form I-130 petition was accompanied by the petitioner's Application to Register Permanent Residence or Adjust Status, Form I-485, also filed on May 2, 2001. On October 24, 2001 the petitioner and his U.S. citizen spouse were requested to appear before a Service officer for an interview, however, they failed to appear on that date and for subsequent reschedules on March 4, 2002, September 17, 2002, and November 15, 2002, and March 24, 2003. According to the Petition for Dissolution of Marriage filed by [redacted] in Los Angeles Superior Court on January 23, 2003, she and the petitioner separated on August 21, 2001, less than five months after their marriage. On March 21, 2003, previous counsel for the petitioner requested that his concurrently filed Form I-485 (with a filing date of May 2, 2001) be withdrawn. The Notice of Entry of Judgment for termination of the marriage between the petitioner and [redacted] is dated October 2, 2003. Page 2 of the Notice of Entry of Judgment states: "There are no assets/debts to be divided by the court. There are no minor children of the parties." According to the petitioner, his first wife, [redacted], gave birth to their third child on October 22, 2003. On November 15, 2003, the petitioner and his first wife, [redacted], remarried in Clark County Nevada. On October 26, 2004, action on the Form I-130 petition was automatically terminated.

Based on the preceding facts, the director concluded that the Form I-130 petition filed by [redacted] on May 2, 2001 "appeared to be based on a fraudulent marriage." While the preceding circumstantial facts raise concerns regarding whether the petitioner attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, the director has not presented "substantial and probative evidence of such an attempt or conspiracy" as required by the regulation at 8 C.F.R. § 204.2(a)(1)(ii). The director's statement

that the Form I-130 petition filed in the alien's behalf "appeared to be based on a fraudulent marriage" is not based on an official investigative report or a sworn statement from the petitioning U.S. citizen spouse sufficiently detailing such a conspiracy. Observations by an officer that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). In this instance, the director has not put forward substantial and probative evidence to establish that the petitioner previously conspired to enter into a fraudulent marriage.

Counsel also disputes the director's finding that the petition was unaccompanied by clear evidence that the petitioner is coming to the United States to continue work in the area of expertise.

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 to 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). It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The regulation at 8 C.F.R. § 204.5(h)(5) states:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such

> evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The Form I-140 petition, filed on July 2, 2002, seeks to classify the petitioner as an alien of extraordinary ability as a music producer and composer. The initial documentation accompanying the petition included no evidence pertaining to the regulation at 8 C.F.R. § 204.5(h)(5). Despite this crucial omission, the Form I-140 petition was initially approved in error on January 31, 2003.

On October 27, 2004, the petitioner appeared before an officer at the Los Angeles District Office for his adjustment of status interview. At that time, the petitioner submitted an October 20, 2004 letter from California stating: "This letter will serve as verification that [the petitioner] began his full time employment with . on June 14, 2004. [The petitioner] is a Chauffeur, earning a salary of $6.75 per hour, plus tips, and gratuities." The petitioner also submitted biweekly pay receipts reflecting that he worked 160.25 hours during the period of August 30, 2004 through September 12, 2004 and 180 hours during the period of September 13, 2004 through September 26, 2004. Thus, during the month of September 2004, more than four years and seven months after his entry into the United States, the petitioner was working an average of more than eighty hours per week as a chauffeur rather than working principally as a music producer or composer.

The petitioner also submitted an October 1, 2004 letter from of Seclusion King Studios stating:

> I am writing this letter to confirm our conversation on September 27, 2004. I would like to retain your services as a co-producer and engineer for the upcoming recording sessions of "Rhythm 'n Kids, Volume Two."
>
> As I mentioned to you, "Rhythm 'n Kids, Volume One" was a marginal success in the smaller markets.
>
> * * *
>
> The compensation for your services will be as follows: $5,000.00 for your work performed as needed at Seclusion King Studios in addition to the royalty rate of 1 point for every mechanical unit sold. A more formal contract will soon follow.

The petitioner also submitted an October 22, 2004 letter from , Fine Art Gallery, Hawthorne, California stating: "This is to certify that [the petitioner], a free lance sound technician/sound engineer, is our regular sound guy operating the sound system that we use whenever we have company parties and special events."

An October 25, 2004 letter from of Carson, California states: "This is to certify that [the petitioner], a sound engineer, has been used and will be used by our company . . . during or company

functions such as our Christmas & New Year's Parties, Nurses' Week Award Luncheons and our Summer Dinner & Dance Nights since January 2003 to present.

We do not find that operating a sound system at events held at an art gallery or for company functions at [redacted] relates to the area of expertise in which the petitioner is seeking extraordinary ability classification, music production and composing, nor is it commensurate to the duties expected of an individual who has sustained national or international acclaim at the very top of his field. See 8 C.F.R. §§ 204.5(h)(2) and (3).

The petitioner also submitted 2004 correspondence from organizations based in the Philippines such as the Philippine Association of the Record Industry, Inc. (Manila), Star Records, Universal Records (Quezon City), Hypernova Productions, Alay Sa 'Yo Lamang Educational Foundation, Inc. (Manila), Godis Widus Ventures, Inc. (Quezon City), and Acts Theater Foundation, Inc. (Quezon City). The letters from these organizations request that the petitioner submit his original musical compositions to them, inform him of the status of previous songs composed by him, and request his editing and mixing services.

Based on the evidence that the petitioner was working full-time in the United States as a limousine chauffeur rather than as a music producer or composer, the interviewing officer concluded that the petitioner did not meet the requirements for classification as an alien of extraordinary ability. The interviewer noted: "[The petitioner] has not worked in the music industry since he entered the United States. This can be proven by taxes he filed the last 3 years. He does not have any contracts to do work in the music industry and seems not to have any contacts to get into the music industry in the United States."

The petition was then forwarded to the California Service Center for revocation of the approval of the petition.

On November 9, 2005, the director of the California Service Center issued a notice of intent to revoke the approval of the petition. The notice of intent to revoke stated:

> On October 27, 2004, the district officer during his interview with the [petitioner] indicated that the [petitioner] has failed to meet statutory requirements under section 203(b)(1_(A) [sic] of the Act. The [petitioner] has not worked in his field of extraordinary ability of music producer/composer since he entered the U.S. He is currently working for a chauffeuring service where he drives a limousine. He claims that he is driving limousines to gain some contacts in the music producing industry here in the U.S.
>
> He does not substantially benefit the U.S. by driving limousines to obtain contracts in the music producing industry in the U.S. He has not given any evidence to prove that he has attempted or has worked in the music producing industry since his last work in the industry in the Philippines. He has not given strong evidence that he will be working the music producing industry anytime soon, because he lacks contacts in the U.S.
>
> While the beneficiary/petitioner, is not required to have an employer, he is required to be coming to the U.S. to continue work in his field of expertise.

> There is no evidence in the record that the beneficiary/petitioner is employed in his field of expertise. As such, the USCIS proposed to revoke the petition.

We find that the last three sentences cited above are contradictory. Further, the director's notice of intent to revoke failed to specifically cite section 203(b)(1)(A)(ii) of the Act or the corresponding regulation at 8 C.F.R. § 204.5(h)(5). The notice of intent to revoke also failed to consider the October 1, 2004 letter from of Seclusion King Studios, the October 22, 2004 letter from of the Fine Art Gallery, the October 25, 2004 letter from Nurses World, Inc., and the 2004 correspondence from organizations based in the Philippines such as the Philippine Association of the Record Industry, Inc., Star Records, Universal Records, Hypernova Productions, Alay Sa 'Yo Lamang Educational Foundation, Inc., Inc., and Acts Theater Foundation, Inc.

In response to the director's notice of intent to revoke, the petitioner submitted a November 29, 2005 letter from , President, c., stating: "This is to certify that [the petitioner] is currently employed as a composer/producer for . As such he is responsible for composing/producing albums for my artists. Per our agreement, he will be paid per song per album produced and for future royalties."

In a December 7, 2005 letter responding to the director's notice of intent to revoke, counsel states:

> At the time of the interview, Petitioner admits that he was not yet working as a producer/composer since he entered the United States. As he had explained to the district officer during his interview, he worked as a limousine driver to establish industry contacts. He explains that in order to enter the field of entertainment, especially in Hollywood, one not only has to have talent but also has to have the right connections---to be at the right time and at the right place. This is not uncommon for striving actors or singers. We always hear stories of movie stars, producers, singers and writers who used to work as waiters, bartenders or drivers. Their main goal was to establish contacts, and as a result, it made them what they are today. Therefore, this chauffeur job is not inconsistent with a music producer who has just relocated to Hollywood. Also, Petitioner's past success in record production in the Philippines will transfer to future success in the U.S. because the formula for success in the entertainment industry in the U.S. is the same.

Pursuant to section 203(b)(1)(A)(i) of the Act and the implementing regulations at 8 C.F.R. §§ 204.5(h)(2) and (3), this classification requires extensive documentation establishing that the petitioner has *sustained* national or international acclaim at the very top of his field. We cannot ignore that after more than four years of living in California, the petitioner is working principally as a chauffer (more than 80 hours per week) rather than working principally as music producer or composer. Counsel's observation that the petitioner is attempting "to enter the field of entertainment . . . in Hollywood" and his comparison of the petitioner to "striving actors or singers" suggest that the petitioner's acclaim as a music producer and composer has not been sustained subsequent to his entry into the United States in 2000. If the petitioner seeks classification as an extraordinary music producer and composer who has reached the very top of his field, then it is implausible for counsel to argue that the petitioner needs to establish contacts "in order to enter the field of entertainment . . . in Hollywood."

Counsel further states:

> From the name itself "Movie [sic] Express Worldwide," . . . Petitioner chose to work as a driver for this limousine company because it caters mostly to executives in the entertainment industry and artists (singers, movie actors) worldwide.
>
> True enough, his job as a limousine driver for Movie [sic] Express, enabled him to meet these executives in the music industry, one of them is the president of . . . . s now employs Petitioner as one of its composers/producers. In his certification, Mr president of attested that Petitioner "is a very talented individual and has a unique way of producing albums." He goes on to say that Petitioner is "a good addition to my label."
>
> * * *
>
> Since Petitioner is now desired by IRIE Records as a producer, he has exhibited proof the Petitioner will continue to be employed in the music industry while in the U.S. Petitioner's employment by IRIE records, as evidenced by the certification should be a [sic] strong enough evidence that Petitioner is indeed continuing to work in his field of expertise.

We are not persuaded by counsel's assertion that the brief five-sentence letter from constitutes "strong evidence." The letter from does not identify the recording artists with whom the petitioner will work, nor does it specify the petitioner's amount of compensation. Further, there is no evidence of a written contractual agreement executed by the petitioner and IRIE Records Inc.

On January 12, 2006, the director issued a notice of revocation informing the petitioner that his evidence did not satisfy the regulation at 8 C.F.R. § 204.5(h)(5). The director's notice stated:

> On December 14, 2005, the attorney of record for the petitioner/beneficiary responded to the intent. The attorney reiterated that the petitioner had been employed as a limousine driver to establish industry contacts. Further stating that this is common practice for striving actors or singers.
>
> The underlying petition was approved under the assumption that the petitioner was an alien of extraordinary ability and had reached beyond the striving actor or singer stage of his career.
>
> Title 8, Section 204.5(h)(5) of the Code of Federal Regulations indicates that no offer of employment is required . . . the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise.
>
> The record contains a letter dated November 29. 2005 and signed by the president of IRIE records, which stated in part: [The petitioner] is currently employed as a composer/producer . . . he is responsible for composing/producing albums for my artists . . . per our agreement, he will be paid per song per album produced and for future royalties . . . he is a good addition to my label.

> No contracts, no evidence of the amount of reimbursements, no convincing evidence of employment was submitted. The record does not contain any supplementary evidence to substantiate the claim, such as pay stubs, tax returns or social security records.

On appeal, counsel states:

> The revocation states that [the IRIE Records] letter – which is far more than what is required by law – is insufficient, because it is not accompanied by proof of employment such as pay stubs, tax returns, or social security records. This type of evidence is not mentioned in the law and why it is being asked of [the petitioner] in this case is unclear. [The petitioner] continues to work for Irie Records studio two or three times a month to produce recording sessions.

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." We agree with counsel that pay stubs, tax returns, or social security records are not required by the statute or regulation, however, we find that that the director was simply identifying other examples of "clear evidence." While the regulation permits letters from prospective employers (such as [redacted] and [redacted], such letters must still be evaluated to establish whether they represent "clear evidence" that the petitioner will continue work in the area of extraordinary ability. In this instance, the [redacted] letter must be considered in the context of the clear evidence from [redacted] indicating that, after more than four years in the United States, the petitioner was working an average of over eighty hours per week as a chauffeur rather than working principally as a music producer or composer. When viewed in conjunction with the petitioner's "full time" employment as a chauffeur for Music Express at $6.75 per hour, we do not find that the petitioner's five-sentence letter from Will Smith constitutes "clear evidence" that the petitioner will continue work as a music producer or composer commensurate with extraordinary ability in the recording industry. Further, we note that the introductory language of section 203(b) of the Act relates to visa "allocation for *employment-based* immigrants." [emphasis added] Because the petitioner seeks immigrant classification based on sustained national or international acclaim as a music producer or composer, it is reasonable to require evidence that he has been and will continue to be employed principally as music producer or composer (rather than working only occasionally as producer or composer and supporting himself primarily through unrelated employment as a chauffeur). Counsel's assurance that the petitioner will "work for [redacted] studio two or three times a month" does not constitute clear evidence that the petitioner will work principally in his area of extraordinary ability. 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, 506 (BIA 1980).

Nevertheless, in this matter, we find that the director's November 9, 2005 notice of intent to revoke was deficient in that it failed to specifically cite section 203(b)(1)(A)(ii) of the Act or the regulation at 8 C.F.R. § 204.5(h)(5). Further, the notice of intent to revoke did not address the October 1, 2004 letter from [redacted] of Seclusion King Studios, the October 22, 2004 letter from [redacted]s of the Fine Art Gallery, the October 25, 2004 letter from Nurses World, Inc., and the 2004 correspondence from organizations based in the Philippines such as the Philippine Association of the Record Industry, Inc., Star Records, Universal

Records, Hypernova Productions, Inc., and Acts Theater Foundation, Inc. The director should have specifically considered this evidence as it relates to the regulation at 8 C.F.R. § 204.5(h)(5). Therefore, we must remand the matter to the director for the purpose of addressing the deficiencies in this evidence and issuing a new notice of intent to revoke.

Beyond the decision of the director, section 203(b)(1)(A)(i) of the Act requires an individual seeking extraordinary ability classification to demonstrate sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation. As required by section 203(b)(1)(A)(i) of the Act and the implementing regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been *sustained*. Given the length of time between the petitioner's arrival in the United States on January 29, 2000 and the Form I-140 petition's filing date of July 2, 2002 (two years and five months), it is reasonable to expect him to have earned national acclaim in the United States during that period. The petitioner has had ample time to establish a reputation as a music producer and composer in this country.

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. Review of the record indicates that the petitioner claims eligibility based on awards, an association membership, published material about him, judging the work of others, original contributions of major significance, performing a leading or critical role for distinguished organizations, commanding a high salary, and commercial success in the performing arts pursuant to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), (iv), (v), (viii), (ix), and (x). The director's decision failed to specifically address these criteria and explain how the evidence submitted for each criterion was not adequate to demonstrate sustained national or international acclaim.

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. We find that the petitioner's 1999 Filipino Academy of Movie Arts and Sciences award for best movie theme song adequately satisfies this criterion.

8 C.F.R. § 204.5(h)(3)(ii) calls for documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner submitted a June 28, 2001 letter from of the Record Industry, Inc. (PARI), stating that the petitioner is "a bona fide member." The record, however, includes no evidence of the membership bylaws or the official admission requirements for PARI showing that it requires outstanding achievement for admission to membership or that prospective members are evaluated by national or international experts in consideration of their admission to membership. Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(iii) calls for published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. The petitioner submitted articles entitled ' ' and ' ' appearing

the tabloid *Tempo Entertainment*. These two brief articles were about rather than the petitioner. The plain language of this criterion, however, requires "published materials about the alien." If the petitioner is not the primary subject of the material, then it fails to demonstrate his individual acclaim. Further, the authors of these articles were not identified as required by this criterion. Nor has the petitioner submitted circulation statistics showing that *Tempo Entertainment* qualifies as major media. Thus, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(iv) calls for 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 June 28, 2001 letter from states that the petitioner "has been consistently invited to be a member of the AWIT's Board of Judges." We do not find that an invitation is tantamount to participation. The plain language of the criterion requires "evidence of the alien's participation." The record includes no evidence specifying the dates of the petitioner's participation or the judges with whom he served. Nor is there contemporaneous evidence of his participation in the form of event programs or published material about the award ceremony confirming his actual involvement. Further, the record lacks information regarding the specific nature of his duties in this capacity and the names of the individuals or music categories he evaluated. Thus, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. In this case, the evidence submitted by the petitioner does not establish that any of his past accomplishments represent original contributions of major significance in the music industry. In order to satisfy this criterion, the petitioner must show that his musical productions and compositions have demonstrably influenced professionals throughout the music industry or that the field has somehow changed as result of his work. We accept that the petitioner is a skilled music producer and composer in the Philippines, but the evidence does not establish that any of his past accomplishments rise to the level of an original contribution of major significance in the recording industry. Thus, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(viii) calls for evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. In this case, the petitioner has submitted no evidence establishing that he has performed in a leading or critical role for a distinguished organization in a manner reflective of sustained national or international acclaim.

8 C.F.R. § 204.5(h)(3)(ix) calls for evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner submitted a February 19, 2002 letter from stating: "[The petitioner] has received compensation for his work over and above that which is normally given to other individuals in the profession." A February 19, 2002 letter from Universal Records, states: "[The petitioner] is . . . one of the highest paid composers and record producers in our country." Neither of the preceding letters, however, specifies the amount of the petitioner's compensation in the Philippines. Nor is there supporting evidence (such as payroll records or income tax forms) showing the

petitioner's actual earnings for any specific period of time. Further, the plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner, however, offers no national salary statistics as a basis for comparison showing that his compensation was significantly high in relation to others in the music industry. There is no evidence that the petitioner earns a level of compensation placing him among the highest paid music producers or composers in the United States or the Philippines. Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(x) calls for evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. In a June 24, 2002 letter accompanying the petition, previous counsel states: "[The petitioner] was awarded 3 Gold Record Awards and a Platinum Record Award as Composer/Producer." The record, however, includes no evidence of such awards being presented to the petitioner. 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. at 533, 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. The plain language of this criterion requires evidence of record "sales." The petitioner has not submitted quantifiable sales figures from an independent source for the specific song recordings that he has produced and composed. Thus, the petitioner has not established that he meets this criterion.

In conclusion, we find that the petitioner has failed to demonstrate that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner has also failed to demonstrate that whatever acclaim he had in the Philippines during the 1990's has been sustained since his entry into the United States in January 2000. 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. Further, we find that the petitioner has not submitted clear evidence that he will continue work in his area of expertise as required by the regulation at 8 C.F.R. § 204.5(h)(5). Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) of the Act and the petition may not be approved. As stated previously, pursuant to *Matter of Ho*, 19 I&N Dec. at 582, 590, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition.

In light of the above, this matter is remanded to the director for the purpose of issuing a new notice of intent to revoke in order for the director to address the deficiencies in the petitioner's evidence as it relates to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3) and (5). The director's new notice of intent to revoke shall cite the pertinent statute and regulations and shall set forth the specific deficiencies in the evidence outlined above and any further deficiencies as noted by the director. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Estime*, 19 I&N at 450, and *Matter of Ho*, 19 I&N Dec. at 582, 590. Here, the petitioner has not sustained that burden.

ORDER: The director's decision is withdrawn. The petition is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.