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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

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LIN 06 039 51548

Office: NEBRASKA SERVICE CENTER

Date **APR 17 2008**

IN RE:

Petitioner: [REDACTED]
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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and evidence, most of which was already part of the record. For the reasons discussed below, the petitioner has not overcome the director’s valid concerns.

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 (Nov. 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 seeks to classify the petitioner as an alien with extraordinary ability in the field of Filipino folk music. He is the founder of a Filipino folk dance troupe in the Philippines. As evidence of his intent to continue in his field, he submits letters from small associations expressing their appreciation for providing dance workshops or invitations to provide workshops.

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). On appeal, counsel asserts that the director erred in concluding that the petitioner did not have a one-time achievement although the petitioner has never previously claimed such an achievement.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could only serve to meet one of the ten regulatory criteria, of which an **alien must meet at least three.** 8 C.F.R. § 204.5(h)(3)(i). **The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees and the prize itself is global, is a familiar name to the public at large and includes a large cash prize.** While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

We will not narrow the petitioner's field to Filipino folk music for purposes of considering whether the petitioner has a major internationally recognized award. Rather, in order to demonstrate a one-time achievement, the petitioner must demonstrate that he has won an award open to members of the field worldwide and recognized internationally at least in the field of dance. As will be discussed in detail below, the petitioner's "awards" are all either regional certificates of merit, institutional expressions of appreciation, a scholarship or government grants issued to the dance troupe founded by the petitioner. As they cannot even be considered lesser nationally or internationally recognized awards, they clearly cannot serve as evidence of a one-time achievement.

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. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The director concluded that the petitioner's "awards" consisted of certificates of appreciation for participation rather than as recognition for excellence in the field, honors conferred by local or regional organizations and a scholarship to attend a class on funding the arts.

On appeal, counsel asserts that the definition of "prize" in Black's Law Dictionary encompasses certificates of appreciation and that even individuals of extraordinary ability continue to sharpen their skills such that scholarships should be considered under this criterion.

Counsel is not persuasive. The regulation at 8 C.F.R. § 204.5(h)(3)(i) does not merely require evidence of prizes or awards, but prizes or awards *for excellence in the field of endeavor*. The phrase "prizes or awards for excellence" is not open to wide interpretation. Rather, a prize or award for excellence is principally designed to recognize past achievement and is not generally contingent on future employment or education/training commitments.

The petitioner submitted a certificate of participation in a course on funding the arts from the Institute for Cultural and Arts Management (ICAM) in the Philippines and a letter from ICAM advising that the petitioner had been accepted as a "scholar" in the program entitling him to free airfare and tuition,

We note that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) relating to aliens of exceptional ability, a lesser classification than the one sought, allows for the submission of certificates from an institution of learning. Such certificates, while they may be indicative of a degree of expertise significantly above that ordinarily encountered in the field (the standard for aliens of exceptional ability), do not rise to the level of establishing extraordinary ability, defined as sustained national or international acclaim. We concur with the director that evidence of participation in coursework cannot be considered a prize or award for excellence. Finally, the record contains no evidence that ICAM selected the petitioner as a "scholar" for a funding the arts course based on his excellence as a musician, his claimed field of expertise. Thus, while we concur with the director that a scholarship is not a qualifying prize or award indicative of sustained national or international acclaim, we further note that there is no evidence that the petitioner's scholarship was issued in recognition of his excellence in the field of music.

The petitioner also submitted the following "certificates" of recognition (two appear on company letterhead rather than formal certificate stationary):

1. A certificate of recognition and appreciation for sharing his time, skills and efforts with the Filipino-American youth in the Chicago area from the President of Red Carpet Productions,
2. A certificate of recognition for promoting Filipino culture from the Filipino-American youth group in the Chicago area, Samahang Kapatid,
3. A certificate of recognition for promoting Filipino culture from the Filipino American Council of Greater Chicago,

4. A certificate of recognition for outstanding and valuable contributions at a performance from the Center for Immigrant Resources and Community Arts in Chicago and
5. A 1999 certificate of recognition from the E. Rodriguez Jr. High School for outstanding and skillful rendition of music which contributed to the Kalinigan Dance Troupe's third place finish in a high school competition in Turkey.

The first four certificates were issued by local Chicago entities and cannot be considered nationally or internationally recognized. Moreover, they express recognition and appreciation rather than recognition for excellence in comparison with other musicians. The final certificate expresses appreciation from a local school for accompanying its dance troupe when it won an award at a competition limited to high schools. The petitioner himself does not appear to have won an award, which appears to have been a dance award, not a music award. More specifically, it does not appear that the petitioner was competing against other musicians for this certificate or that the high school dance troupe was specifically recognized for the adult musician accompanying their dance.

The petitioner also received "Laguna's Best" from the Laguna Association of the Midwest, Inc. in the category of outstanding contributions in the Philippine Cultural Arts. Those eligible to receive this recognition must be a native of Laguna and a U.S. citizen or legal resident anywhere in the United States. We are not persuaded that an award or prize limited to natives of a foreign province residing within the United States and issued by an extremely local entity can be considered nationally or internationally recognized either in the United States or the Philippines. On appeal, counsel references a letter from [REDACTED], President of the Laguna Association of the Midwest, Inc., who asserts that the Laguna's Best award "is given to show extraordinary and international prominence of sons and daughters of [the] Laguna province." This statement may reflect the intent of the association, but does not change the fact that the award is limited to natives of a foreign province residing in the United States. The record contains no evidence that those selected for this honor are reported in national media or other evidence that non-Laguna dancers outside of Chicago recognize this prize or award as significant.

In light of the above, we concur with the director that 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.

The director concluded that the Bayanihan dance troupe, with which the petitioner performed until 1999, was not an "association" as contemplated in the regulation at 8 C.F.R. § 204.5(h)(3)(ii), that the petitioner had not established that the International Dance Council (CID) or the Philippine Folk Dance

Society require outstanding achievements. The director also noted that the CID membership documented postdates the filing of the petition.

On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(ii) does not limit memberships to “professional” associations and, thus, that employment with a prominent dance troupe should serve to meet this criterion. Counsel further asserts that it is not “an issue” that the membership in CID postdates the petition because it simply “corroborates” the evidence of his “membership” in Bayanihan. Counsel does not address the director’s concerns that the record does not establish that either CID or the Philippine Folk Dance Society require outstanding achievement other than to reiterate the claim that the petitioner meets this criterion through his “membership” in Bayanihan.

Counsel is not persuasive. In the context of the full regulation at 8 C.F.R. § 204.5(h)(3)(ii), which requires evidence of “membership in associations” we concur with the director’s interpretation of “associations” as excluding performing arts troupes. It is inherent to performing arts to perform within a group just as many athletes perform on a team. The supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the “extraordinary ability” standard. . . . A blanket rule for all major league athletes would contravene Congress’ intent to reserve this category to “that small percentage of individuals who have risen to the very top of their field of endeavor.”

We are not persuaded that performing with a distinguished dance troupe is any more persuasive than playing on a major league team, which, for the reasons stated in the commentary, is not presumptive evidence of eligibility.

Moreover, the regulation requires that the association require outstanding achievements. We acknowledge that the Internet materials and application form submitted reveal that applicants must audition to join Bayanihan. Once a dancer joins the troupe, however, the petitioner asserts that the dancer must attend “continuous training until become [sic] ready to perform with the troupe in its local and regular events then national tours and eventually international tour participating in different culture and arts events.” Thus, it appears that joining Bayanihan initially does not require outstanding achievements, but includes dancers who are still training to reach a national or international performance level. We acknowledge that the petitioner himself performed with the group at international events. At issue, however, are the minimum requirements for “membership” in the troupe. The petitioner’s role within the group is far more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) and will be discussed below in that context.

The record establishes that the CID admitted the petitioner to membership on March 3, 2006. Contrary to counsel’s assertion on appeal, the fact that the petitioner was not a member of CID until after the petition was filed is relevant. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Moreover, a petition cannot be approved at a future date after the petitioner

becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

Regardless, the director also concluded that CID did not require outstanding achievements of its members. The petitioner submitted materials about CID that appear to have been sent to him from an unknown source via electronic-mail. While these materials reflect that CID members “are the most prominent federations, associations, schools, companies and individuals in more than 120 countries,” the materials later state that it is “open to membership, accepting organizations, institutions or persons with sufficient credentials in dance.” These materials cannot establish that CID requires outstanding achievements of its members.

The petitioner is also a Lifetime Member of the Philippine Folk Dance Society. The petitioner submitted self-serving statement asserting that Lifetime Members must meet one of the following criteria:

1. Excellent achievement in Philippine Folk Dance as a dancer, choreographer and director,
2. Outstanding contribution / work authored or directed by the member or applicant, or
3. Received national and international recognition / award as to excellence of his/her works.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). Without evidence from the society itself confirming its membership requirements, we cannot conclude that the petitioner’s Lifetime Membership serves to meet this criterion. Moreover, even if we accepted the petitioner’s self-serving statement, without additional explanation of what an “excellent achievement” is or at what level a Lifetime Member must have authored or directed a work, we cannot conclude that society Lifetime Membership requires outstanding achievements of its Lifetime Members.

In light of the above, we concur with the director that 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.

The petitioner submitted newspaper articles promoting or reviewing performances by Bayanihan and Lahing Kayumanggi in local U.S. publications such as *gO!*, *The Filipino American Community Builder*

and the *Milwaukee Journal Sentinel*,² Taiwanese newspapers *The United Daily News* and *The Liberty Times* and Filipino publications such as the *Manila Bulletin*. The petitioner also submitted a translation of an article that apparently appeared in the *China Times* but the original foreign language document is not in the file. While the petitioner appears in some of the photographs accompanying the articles promoting or reviewing performances of Bayanihan, the petitioner is not mentioned by name in any of those articles. Counsel's assertion on appeal that the petitioner need not be mentioned by name in the published material because the record establishes that he performed with Bayanihan is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner. We are not persuaded that articles that are clearly about the dance troupe as a whole and do not mention the petitioner by name can be credibly considered "about" the petitioner himself. The petitioner is mentioned by name and sometimes quoted in the articles promoting or reviewing performances by Lahing Kayumanggi, but none of these articles can be said to be "about" the petitioner.

The petitioner also submitted a self-serving newsletter from Lahing Kayumanggi announcing that Radio Philippines Networks (RPN) had featured the group on a televised episode of "Tropang Pinoy" as part of National Arts Month. On appeal, counsel asserts that the show was broadcast nationwide. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that the documentary was broadcast nationwide. While the petitioner submits a translated transcript of an interview with the petitioner and his wife that was included in the episode of "Tropang Pinoy" featuring Lahing Kayumanggi and a video compact disc of the episode, a review of this evidence does not establish that the episode was broadcast nationwide.

In summary, none of the print media coverage of Bayanihan or Lahing Kayumanggi is "about" the petitioner. The petitioner has not established that the single interview of the petitioner was broadcast nationally. This single interview is simply not indicative of or consistent with sustained national or international acclaim and cannot serve to meet this criterion.

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

The petitioner claimed to meet this criterion through his research of Rondalla music and the establishment of the Lahing Kayumanggi Folk Arts Association, which includes a dance ensemble that performs locally and internationally (mostly at small ethnic festivals) with traditional costumes and music; a history, culture and arts library (a solitary bookshelf with a couch and table according to the photograph submitted); a center for the arts that provides workshops and training and a three-year youth development program funded by the Philippine government. The petitioner submitted a self-serving

² While the petitioner submitted evidence that the *Milwaukee Journal Sentinel* is "Wisconsin's largest and most influential newspaper" and that it covers world events, the petitioner did not submit evidence that the newspaper has a national circulation or any significant circulation beyond Wisconsin.

profile of Lahing Kayumanggi, evidence of the group's organization and membership in CID, photocopies of sheet music allegedly "composed and/or arranged" by the petitioner, evidence that Lahing Kayumanggi students have demonstrated dance and other accomplishments and evidence of grants from the Philippine National Commission for Culture and the Arts (NCCA).

The director concluded that the only evidence of original contributions was the petitioner's cultural research into unpublished folk dances and that the record lacked evidence that the petitioner was recognized for this work.

On appeal, counsel asserts that the petitioner submitted sufficient evidence corroborating the significance of his cultural research. The petitioner submitted what are purported to be his notes describing the research and letters from individuals affirming that the petitioner visited their town and researched their culture traditions.

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. To be considered an artistic contribution of major significance, it can be expected that the research would be demonstrably influential beyond the petitioner's own troupe. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The record lacks evidence that other Philippine folk dance troupes or cultural researchers frequently use the petitioner's small library. The record also lacks evidence that the petitioner's notes on local culture have been published or have otherwise influenced other folk groups in the Philippines such that the petitioner's compositions or arrangements are frequently performed by other groups.

The NCCA grants are also not persuasive. Government grants demonstrate that the government finds the proposed project worthwhile, not that the end results of the project constitute a contribution of major significance.

For the reasons discussed above, we concur with the director that 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.

The director concluded that the petitioner has established that he meets this criterion. The director's conclusion that the dance troupe founded by the petitioner has performed at festivals that showcase their art is supported by the record. Evidence submitted on appeal, however, casts some doubt on the significance of these festivals. Specifically, the episode of "Tropang Pinoy" that features Lahing Kayumanggi briefly shows the performance at Kimex 2000, which appears from the footage to be sparsely attended. Moreover, the petitioner previously submitted a photograph of himself performing at the Daley Center in Chicago. The petitioner is performing by a revolving door rather than on a dedicated stage. The nature of the performance area suggests that this "showcase" was not significant.

Regardless, the petitioner must demonstrate that these festivals were showcases of his art. We acknowledge the petitioner's claim to have composed the music used by Lahing Kayumanggi dancers. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The programs for Lahing Kayumanggi performances do not support the petitioner's claim. The petitioner is listed as the Founder and Music Director of Lahing Kayumanggi. No composer is listed, as would be expected of a showcase of original music, and the petitioner is not listed as a musician. Moreover, the petitioner has not resolved the apparent discrepancy between reviving unpublished folk music and composing original music. Thus, even if we were to conclude that the festival performances constitute displays at artistic exhibitions or showcases, they did not showcase the petitioner's compositions. That said, we acknowledge that the petitioner appears to have performed with the troupe. The record does not establish, however, that the small-scale dance performances accompanied by the petitioner constitute showcases of the petitioner's art indicative of or consistent with his sustained national or international acclaim.

Finally, the petitioner asserts that the petitioner showcases and exhibits his work at Lahing Kayumanggi's cultural library. The statutory standard for the classification sought is national or international acclaim. Thus, the evidence submitted to meet any given criterion must be indicative of or consistent with national or international acclaim. Anyone can open a "cultural library" in their home or studio and thereby technically "display" their work. In order to meet this criterion, the exhibition or showcase must attract some type of national interest. As stated above, the photograph of the library consists of one bookshelf with a couch and table. A hand painted sign outside promotes the library. The record contains no evidence that any other folk dance researcher or expert outside of Lahing Kayumanggi performers ever visit this library. Without evidence that this library is frequently visited, we cannot conclude that it constitutes an exhibition or showcase of the petitioner's work.

In light of the above, we must withdraw the director's conclusion that the petitioner meets this criterion.

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

The director acknowledged the distinguished reputation of the Bayanihan Philippine Dance Company. The director, however, concluded that the petitioner was one of several musicians and, thus, did not play a leading or critical role for the troupe. While the director accepted that the petitioner, as the founder of Lahing Kayumanggi, played a leading role for that group, the director questioned whether this group had a national distinguished reputation.

On appeal, counsel asserts that as the musical director for Bayanihan, the petitioner played a leading or critical role for Bayanihan. The petitioner submits a letter from [REDACTED], Technical Director for Bayanihan, asserting that the petitioner was the youngest "musical coordinator" for the group. The

petitioner did not submit an organizational chart for Bayanihan. The fact that the petitioner was the youngest musical coordinator does not necessarily imply that the musical coordinator is a leading or critical role, especially in the absence of evidence as to the number of musical coordinators Bayanihan employs at any one time. We note that the petitioner's highest position in Bayanihan listed in any of the programs submitted is as one of two assistant music directors. Regardless, the petitioner left Bayanihan in 1999. Thus, his work with that troupe cannot be considered evidence of sustained acclaim six years later in 2005 when he filed the petition without evidence that any acclaim he may have enjoyed in 1999 continued through the date of filing.

We concur with the director that the petitioner plays a leading or critical role for Lahing Kayumanggi. The record establishes that Lahing Kayumanggi has performed at festivals in the Philippines and other countries, including the United States and Taiwan. Many of these performances, however, appear to be at minor venues such as high schools, colleges and a U.S. Postal Service Processing and Distribution Center. We acknowledge that Lahing Kayumanggi is reported to have performed at the Daley Center in Chicago and is listed as one of the "best Filipino Folk Dance and Music" groups to perform at the Sari-saring Sayaw Sama-samang Galaw Festival at the Cultural Center of the Philippines. While a local Chicago Filipino newspaper, the *Filipino-American Community Builder*, asserts that Lahing Kayumanggi performed at the Daley Center and was featured in the *Chicago Sun Times*, the photograph appearing in the *Chicago Sun Times* submitted by the petitioner from page 38 does not appear to be accompanied by a news story. Regardless, as stated above, the record does not suggest that performing at the Daley Center was a major event. The program lists the troupe as one of several cultural performers and the photograph from this performance shows the group performing next to a revolving door rather than on a dedicated stage.

We acknowledge that the Cultural Center of the Philippines promoted the festival featuring Lahing Kayumanggi as one of 15 of the "best Filipino Dance and Music" groups. This claim, however, is promotional and not supported by other evidence of record. We note that three of the other 15 groups listed on the promotional materials are high school groups.

While Lahing Kayumanggi has performed in a notable venue in the Philippines (where the group was promoted at the same level as the high school troupes also performing), we are not persuaded that its overall performance record demonstrates its nationally distinguished reputation. Rather, its performances appear commensurate with a moderately successful dance troupe that promotes a local culture through dance performances in the Philippines and at mostly ethnic festivals abroad.

In light of the above, we uphold the director's conclusion that the evidence falls short of meeting this criterion.

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

The petitioner did not previously claim to meet this criterion. Rather, the petitioner submitted evidence of NCCA grants issued to Lahing Kayumanggi and the group's financial statements, which do not reflect the petitioner's personal remuneration. Thus, the director concluded that the petitioner had not submitted evidence relating to this criterion.

On appeal, counsel asserts that the director should have considered the grants issued to Lahing Kayumanggi and the income of the group. Counsel also asserts that the petitioner is submitting tax returns demonstrating that "he and his wife reported a gross income of \$1,545,340 in 2002." The tax returns submitted, however, are those of Lahing Kayumanggi and do not include any information about the petitioner's personal remuneration from this group. Moreover, the figure of 1,545,340 pesos (not dollars as stated by counsel) constitutes the group's gross income. The group also reported expenses of 1,591,896.96 pesos, resulting in a net loss. Similarly, in 2003, the group also reported a net loss.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that "the alien" commanded a high salary or other remuneration for services in relation to others in the field. Thus, according to this plain language, the petitioner must demonstrate the remuneration he himself received and provide evidence that allows us to compare this remuneration with others in the field. The petitioner did not provide any of this required initial evidence. Thus, he 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.

As stated above, the petitioner has submitted the financial statements of Lahing Kayumanggi for 2002 and 2003. These statements show ticket sales of 33,600 pesos in 2002 and of 430,460 pesos in 2003. The director concluded that 430,460 pesos are the equivalent of \$8,189.88 and that the record lacked evidence that this amount was indicative of commercial success even within the limited subfield of folk dance. On appeal, counsel does not challenge the director's statement that the ticket sales in 2003 amounted to only \$8,189.88. Rather, counsel asserts that this figure is consistent with commercial success in a country where the minimum wage is 167 pesos and 34 percent of the population lives below the poverty line.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without evidence of the range of ticket sales for the most prestigious dance companies in the Philippines, we cannot conclude that Lahing Kayumanggi's ticket sales are consistent with commercial success. We note that the group received far more money in grants and professional fees and still reported a net loss in both 2002 and 2003. It can be presumed that a dance company enjoying commercial success would not be reporting a net loss.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a dance troupe promoter and musical director 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 indicates that the petitioner shows past talent as a music coordinator, but is not persuasive that the petitioner's achievements set him significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

ORDER: The appeal is dismissed.