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U.S. Citizenship  
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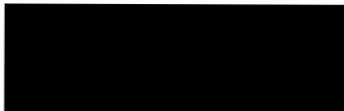
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FILE: LIN 06 262 51618 Office: NEBRASKA SERVICE CENTER Date: AUG 08 2008

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
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 AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner seeks classification as an "alien of extraordinary ability," 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 that he qualifies for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petition "should be remanded because the . . . Director did not specify how the evidence submitted by [the petitioner] was deficient." Counsel further states:

The . . . Director's Request for Evidence . . . was vague and ambiguous because the RFE merely restated all of the various criteria for demonstrating sustained national or international acclaim but did not specify which criteria . . . [the petitioner] failed to establish. Then, [the director] merely followed up the vague and ambiguous RFE with a vague and ambiguous [d]ecision in which [the director] denied the . . . [petition] but, again, did not specify which criteria [the petitioner] had failed to establish and how he had failed to establish them in order to show the requisite sustained national or international acclaim.

For the reasons discussed below, we find that the director's request for evidence was properly issued in accordance with the regulation at 8 C.F.R. § 103.2(b)(8). However, we agree with counsel that the director's decision fails to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. The director's decision identifies some of the documentation submitted by the petitioner, but it does not specifically address the deficiencies in his evidence in relation to the relevant regulatory criteria at 8 C.F.R. § 204.5(h)(3). Thus, we must remand the matter to the director for issuance of a new decision that properly addresses the deficiencies in the record. We provide the following guidance in complying with this remand order.

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, 60898-99 (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, filed on September 12, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a security consultant. At the time of filing, the petitioner was working as a personal security officer for ██████████ ██████████ and her family, and as Head of Security for CDA Productions (Las Vegas) Inc.'s show "A New Day" featuring ██████████ ion at the Colosseum at Caesars Palace in Nevada.

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, internationally 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. The criteria follow.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In an August 8, 2006 letter accompanying the petition, counsel states: "The [CIS] regulations . . . at 8 C.F.R. § 204.5(h) require that the alien present evidence of at least 3 of the 6 criteria of extraordinary ability. In this case, [the petitioner] meets 4 of the 6 criteria set forth in the regulations . . ." Counsel's statement regarding "the 6 criteria set forth in regulations" is incorrect. The regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, not six as indicated by counsel.

The August 8, 2006 letter from counsel includes arguments addressing the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), and (ix). Although counsel's letter claims that the petitioner meets four of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the petitioner has not specifically identified the fourth regulatory criterion that he claims to satisfy. On page 4 of the letter, under item 4, counsel states that the petitioner "has performed in numerous countries throughout the world" and then discusses evidence demonstrating his oversight of Celine Dion's security operations, but this discussion does not appear relevant to any of the remaining criteria at 8 C.F.R. § 204.5(h)(3).<sup>1</sup> None of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) call for evidence that "the alien has performed in numerous countries throughout the world."

On January 17, 2007, the director issued a request for evidence citing a lack of evidence that the petitioner has sustained national or international acclaim and that his achievements have been recognized as extraordinary by others in the field.

On appeal, counsel states:

The RFE then went on to restate the criteria set forth at 8 C.F.R. § 204.5(h)(3)(i) through (x) and the "comparable evidence" provision at 8 C.F.R. § 204.5(h)(4).

The RFE provided no other guidance as to why the documentation already submitted did not meet the aforementioned criteria and what further documentation the . . . Director believed was necessary to meet the criteria in question.

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<sup>1</sup> The petitioner's performance of security oversight duties for ██████████ was already discussed by counsel on page 3 of the August 8, 2006 letter as evidence relating to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Pursuant to the regulation then in effect at 8 C.F.R. § 103.2(b)(8) (2006),<sup>2</sup> in instances where initial evidence or eligibility information is missing or CIS finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, CIS shall request the missing initial evidence. In this instance, as counsel had incorrectly asserted in the August 8, 2006 letter that there were six regulatory criteria rather than ten, the director acted properly in restating the criteria at 8 C.F.R. § 204.5(h)(3). Further, the plain language of the regulation at 8 C.F.R. § 103.2(b)(8) does not require the director to provide “guidance as to why the documentation already submitted did not meet the aforementioned criteria” or specifically identify “what further documentation . . . was necessary to meet the criteria in question.”

The remaining issue to be determined is whether the director’s notice of denial addressed the deficiencies in the evidence submitted such that the petitioner could file a meaningful appeal addressing those deficiencies. On April 11, 2007, the director issued a decision stating, in pertinent part:

According to the record, the petitioner’s area of expertise is personal security (bodyguard) for [REDACTED].  
[REDACTED] The documents submitted as initial evidence include:

Evidence of contractual relationship as bodyguard, including copy of Agreement between petitioner and CDA Productions (Las Vegas) which outlines the duties and responsibilities of the alien petitioner.

Reference letters written by peers and colleagues. The letters, which all support petition approval, provide information and opinions about the alien’s contributions to his employers and the alien’s professional qualifications.

The record includes photos of the petitioner while performing his security duties in various prominent venues and with his world famous employer and her family. The record also includes information on the importance of security for world famous personalities and examples of tragic consequences that can happen if security is inadequate.

The Service issued a Request for Evidence (RFE) on January 17, 2007. In a response received on April 3, 2007, the petitioner submitted a letter from the attorney of record, and two letters attesting to the expertise of the alien petitioner.

It is readily apparent that the petitioner is a successful security consultant. For example, the record shows the alien has successfully enforced security at various prominent venues while in the employ of CDA Productions, and at the time of filing the Form 1-140 held such position. This employment record is a favorable consideration, but in itself does not establish eligibility. In *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm. Exams 1994), the Service explained that performance at the major league level was a fact that may help to establish that an athlete meets several of the listed

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<sup>2</sup> The regulation at 8 C.F.R. § 103.2(b)(8) was later revised and no longer requires CIS to issue an RFE when the petitioner’s submission is insufficient. On April 17, 2007, CIS promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

criteria, but “[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.’” That reasoning applies to individuals employed in prominent capacities in other fields of endeavor.

The record in this case lacks evidence of receipt of a major, international award or, in the alternative, of sustained national or international acclaim at least three of the regulatory criteria. 8 C.F.R. § 204.5(h)(3). It is noted, however, that the petitioner has met the criteria for performing a lead or critical role for CDA productions and so has met one of the criteria. The Service acknowledges opinions presented in letters written expressly for this proceeding, but these do not overcome the lack of documentary evidence of sustained acclaim. In *Matter of Chawathe* (USCIS Adopted Decision, January 11, 2006), the Service reaffirmed that 8 C.F.R. § 204.5(h)(3) requires “specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability.”

As stated in *Matter of Price*, 20 I&N at 955, it was “Congress’ intent to reserve this category to ‘that small percentage of individuals who have risen to the very top of their field of endeavor.’” Based on the evidence of record, it cannot be concluded that the petitioner, through evidence of sustained national or international acclaim, is recognized as one of that small percentage who have risen to the very top of the field. 8 C.F.R. § 204.5(h)(2).

The burden of proof in these proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In view of the above, the petition is denied.

The director’s decision listed all ten of the regulatory criteria, and stated that the petitioner had satisfied the leading or critical role criterion at § 204.5(h)(3)(viii). The director acknowledged the petitioner’s submission of reference letters written by peers and colleagues that discuss his “contributions,” but did not specify the deficiencies in this evidence in the context of the criterion at 8 C.F.R. § 204.5(h)(3)(v). Rather, the director’s decision noted that the letters “all support petition approval.” The director also acknowledged the petitioner’s submission of a contractual agreement between the petitioner and CDA Productions (Las Vegas), Inc., but did not address his \$90,170.00 salary as it relates to the criterion at 8 C.F.R. § 204.5(h)(3)(ix).<sup>3</sup> Thus, the director’s decision failed to adequately consider the evidence submitted for the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (ix) and discuss why that evidence was deficient.

On appeal, counsel states:

[The petitioner] is put in the position of proceeding with an appeal without knowing why the . . . Director denied his [petition]. This is clearly a violation of fundamental fairness and places [the petitioner] in a disadvantageous position.

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<sup>3</sup> The petitioner submitted a January 31, 2006 letter from CDA Productions, Inc. stating that the petitioner “has an employment contract for a period of three (3) years and receives an annual salary of ninety thousand one hundred seventy dollars (\$90,170.00) together with medical benefits.”

The record clearly establishes that [the petitioner] meets three of the necessary criteria set forth at 8 C.F.R. § 204.5(h)(3).

Specifically, [the petitioner] satisfies the evidentiary criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii) and (ix).

We note the following deficiencies in the petitioner's evidence as it relates to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), and (ix).

*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 from his personal and professional contacts. We cite representative examples here.

[REDACTED], an internationally renowned singer, and her husband and manager, [REDACTED], state:

Since joining us in August 2000 [the petitioner] has held a variety of senior positions within our security network, including acting as our Personal Security Officer, a position he maintains to this day. Since the opening of our Las Vegas show on March 25, 2003, he has added the role of Head of Security, to his portfolio, effectively managing a team of professionals.

Over the years, [the petitioner] has been overseeing security operations of our numerous social and business functions around the world. He has always been able to manage our activities with discretion and diplomacy under the most stressful situations. We trust his judgment, respect his professionalism, and value his dedication.

[REDACTED], a retired New York City Police Sergeant, states:

I find [the petitioner] to be one of the leading security consultants in the Music Industry today. He is a highly organized, take charge professional, with a vast knowledge in the personal protection and security field. His outstanding reputation for designing and implementing effective security programs has made him one of the most sought after security advisers for countless celebrities and venue management groups worldwide. He has demonstrated time and time again his ability to exceed everyone's expectations by designing and implementing security strategies, which cover all aspects from Threat Assessments to Event Planning.

While serving as an independent security consultant he has provided security services and safety for major recording artists and music industry executives here in the United States and while traveling abroad.

Arthur Belovin states that the petitioner is "one of the most sought after security advisers for countless celebrities and venue management groups worldwide," but, aside from the documentation of the petitioner's

work for [REDACTED], there is no evidence originating from any other celebrities or venue management groups to corroborate [REDACTED] assertion. Nor is there evidence establishing that the security programs designed and implemented by the petitioner constitute original contributions of major significance in the field. According to his resume, the petitioner provided transportation (as a driver) and security for [REDACTED] [REDACTED] when they made appearances in Montreal in 2002, but there is no evidence to support these claims. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED], President, Five Star Feeling Inc., states:

As the President of [REDACTED] International Marketing company, I have worked closely with [the petitioner] in numerous high-profile events throughout the world. During the past decade [the petitioner] has traveled extensively with [REDACTED] and entourage, and has provided an extremely high level of operational and strategic security.

[REDACTED], i5 LLC, Henderson, Nevada, states:

I have observed [the petitioner's] work as leader of the security detail for [REDACTED] and family, whom I work for as a business consultant.

\* \* \*

I have also observed [the petitioner] execute his complex work as a worldwide logistic and security protocol adviser, most notably advancing major events that [REDACTED] is due to perform or appear at, including the Super Bowl, The Grammy Awards, and all the major TV award and talk/news shows. [The petitioner] has shown an amazing attention to detail, enabling [REDACTED]'s entourage to move smoothly and safely through what very often can be a chaotic situation. His leadership of the security team has also been of the highest quality, as he has overseen the best, most highly motivated security group that I have seen in my 20+ years in the entertainment industry.

[REDACTED] Director of Security, Suncoast Hotel & Casino, Las Vegas, Nevada, states:

I have known [the petitioner] both socially and professionally for over three years. A mutual friend . . . introduced us to each other. [The petitioner] is in charge of the protective detail for Ms. [REDACTED] and her family.

Over the past three years, I have personally observed [the petitioner] in a professional setting in which he conducted his security responsibilities with the utmost diligence, care and precision while being ever cognizant not to violate any Federal or State laws of the United States of America.

[The petitioner's] expertise in the field of security is unparalleled as evidenced by his extensive background as a security consultant and advisor for major events and award shows where [REDACTED]

and other high profile celebrities and dignitaries are in attendance both in the United States and abroad.

President and Chief Executive Officer, Quality Investigations, Inc., Henderson, Nevada, states:

I met [the petitioner] in 2003, through my contract relationship with a prominent international entertainer at CDA Las Vegas.

[The petitioner] is currently the Director of Security for CDA Las Vegas and oversees the compliance of several employees and vendors who have access to his client.

Due to the nature of my work, I have witnessed firsthand the importance of [the petitioner's] personal and business relationship with the [REDACTED] family. In the security industry one of the most difficult adjustments is the demand for inter-personal skills amongst executive security personnel. Oftentimes the personal relationship is built on trust and intimacy due to the number of hours per day spent traveling together for assignments. [The petitioner] excels in this area.

[REDACTED], Kung Fu Canada, states:

I have had the pleasure of teaching [the petitioner] for the past 9 years at Kung Fu Canada . . . .

Honest and reliable, [the petitioner] has held several high level security positions where he has been responsible for the safety of many prominent figures. In his current position as worldwide logistic and security protocol advisor and consultant for the celebrated [REDACTED] family, [the petitioner] goes to great lengths to ensure the family's protection and well being: traveling with the family and assuring security protocols are met at all times. An invaluable member of the security team, [the petitioner] continues to hold the [REDACTED] family's utmost confidence and trust.

The preceding letters of recommendation reflect that the petitioner has performed admirably in providing security for the [REDACTED] family. The letters also indicate that the petitioner has earned the respect of those close to him based on the professionalism he displays in performing his security duties. Aside from showing that the petitioner fulfilled his obligation to protect his clients, the letters of recommendation do not specify what the petitioner's original contributions in the security field have been, nor is there an explanation indicating how any such contributions were of major significance to his industry. 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. While the record reflects that the petitioner is a skilled professional, the evidence submitted by him does not establish that he has made original contributions of major significance in the field of security. For example, there is no evidence showing that security tactics developed by the petitioner have significantly influenced others in his field or that the field has somehow changed as result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field and those close to the petitioner, 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 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of recommendation letters 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. Thus, the content of the authors' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a security consultant who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

We withdraw the director's finding that the petitioner meets this regulatory criterion.

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 organization or establishment and the reputation of the organization or establishment. The record includes ample published material demonstrating that [REDACTED] has a distinguished reputation in the music industry. However, there is no evidence showing that CDA Productions, Inc. or the petitioner's security consulting service has earned a distinguished reputation in the security industry. Further, the evidence submitted by the petitioner is not adequate to demonstrate that he was responsible for CDA Productions, Inc. or his other employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. As such, the petitioner has not established that he meets 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 submitted a January 31, 2006 letter from CDA Productions, Inc. stating that he "has an employment contract for a period of three (3) years and receives an annual salary of ninety thousand one hundred seventy dollars (\$90,170.00) together with medical benefits."

On appeal, counsel states: "According to O-Net, under the job title of "security guards" and "bodyguards" section 33-0932[,] the average salary . . . is \$20,520.00. Thus, clearly [the petitioner's] salary of \$90,170 is almost 4 ½ times more than the average salary, according to O-Net." The record, however, includes no documentary evidence of the O-Net salary data or information about O-Net. Without documentary evidence from O-Net, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 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). Further, the plain language of this regulatory criterion requires the petitioner to submit

evidence of a high salary “in relation to others in the field.” As a basis for comparison, the petitioner relies upon “average salary” statistics for “security guards” and “bodyguards.” This petition, however, identifies the petitioner as a “security consultant” who provides executive security for ██████████ and her family. In this instance, the basis for salary comparison selected by counsel is not appropriate for two reasons. First, the petitioner must submit evidence showing that his salary is significantly high in relation to that of security consultants (rather than security guards). Second, the petitioner’s evidence must demonstrate that his salary places him at the very top of his field rather than simply above average in his field. See 8 C.F.R. § 204.5(h)(2). There is no evidence showing that the petitioner has earned a level of compensation that places him among the highest paid security consultants in the United States, Canada, or any other country.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director’s decision, however, failed to explain the deficiencies in the evidence submitted such that the petitioner could file a meaningful appeal addressing those deficiencies. As the petition is not approvable, we must remand the matter to the director for issuance of a new decision that properly addresses the preceding deficiencies in the petitioner’s evidence for each of the applicable regulatory criteria at 8 C.F.R. § 204.5(h)(3).<sup>4</sup> The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and seeks to continue work in his area of expertise in the United States.

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.

**ORDER:** The director’s decision is withdrawn. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.

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<sup>4</sup> The director may also address any further deficiencies found in the petitioner’s evidence not included in the AAO’s discussion of the regulatory criteria.