

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

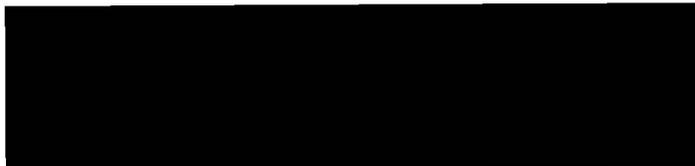


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 13 2008
LIN 07 029 52053

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

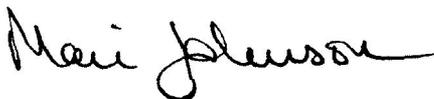
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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 additional evidence, most of which was submitted previously in duplicate. We will address counsel’s assertions on the merits below. In addition to those assertions, counsel also asserts that the director erred in issuing a broad request for additional evidence that merely listed the regulatory criteria without identifying any deficiencies in the evidence already submitted. Counsel further asserts that the director erred in failing to explain why the petition was being denied despite previous approvals of nonimmigrant visas for the petitioner in a similar classification.

First, we note that director’s final decision was based on the insufficiency of the evidence, not “adverse evidence” of which the petitioner was not advised as implied by counsel. Counsel acknowledges that the final denial provided specific assertions of deficiencies. Counsel does not explain what evidence the petitioner would be able to provide in a response to a more specific request for additional evidence that has not already been provided, including on appeal. The most expedient remedy for the director’s failure to issue a more specific request for additional evidence is to consider all new evidence on appeal.

Second, the fact that nonimmigrant petitions in a similar classification have been approved in behalf of the petitioner does not create a presumption of eligibility for the similar but different immigrant classification sought in this matter. The petitioner is a visual artist. The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The

distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o) does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a non-immigrant visa under the lesser standard of "distinction" is not evidence of his eligibility for the similarly titled immigrant visa. Regardless, each petition must be adjudicated on its own merits under the regulations that apply to the benefit sought. Thus, the petitioner's eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification, discussed below. As will be discussed in more detail, while we withdraw the director's concern that the petitioner's book is outside of his field of visual arts, we uphold the director's ultimate conclusion that the evidence does not carry the weight ascribed by counsel (and often bears little relation to the criterion it is alleged to meet) and cannot fulfill the regulatory requirements.

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 the 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 as a visual artist. 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 petitioner has submitted evidence that, he claims, meets the following criteria.

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

On appeal, counsel asserts that the director applied the higher major award standard under this criterion. We will examine each piece of evidence below. At the outset, however, it is instructive to review the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i). First, while the award may be "lesser" than a major, internationally recognized award, it must be nationally or internationally recognized. It must also be a prize or award as those words are commonly understood and it must be issued for excellence in the petitioner's field, in this case visual art. Counsel has asserted that the petitioner meets this criterion through the submission of four documents, three of which cannot be considered a "prize" or "award" as those terms are generally understood. The only "award" in the record was not issued in recognition for excellence in the field of art.

Specifically, the petitioner submitted the following evidence:

1. A plaque presented to the petitioner by UNICEF "in recognition of your exceptional support to UNICEF";
2. Acceptance to participate in the Seaside Institute's Escape to Create artist-in-residence program;
3. Certification as an artist issued by the New York City Department of Cultural Affairs allowing for residence in the Workspace, Inc. artists' cooperative; and
4. An invitation issued to the petitioner from the Museum of Life and Science in Durham, North Carolina to do a voice recording for his book for "permanent display."

The director concluded that the award from UNICEF was issued in recognition of the petitioner's "time" as a volunteer and was not issued for excellence in the field of visual art. The director further concluded that the record did not reflect that acceptance in the artist-in-residence or the artists' cooperative reflects national or international recognition of the petitioner's work. Finally, the director concluded that an invitation to read his book was not a nationally or internationally recognized award or prize in the visual arts.

On appeal, counsel asserts that the plaque from UNICEF was not issued for volunteering “time,” but for the petitioner’s contributions of talent and artwork. The petitioner submits several UNICEF mailers, guides, posters and fundraising promotions featuring his artwork.

We acknowledge that the petitioner contributed more than “time” to UNICEF. The director, however, also concluded that the award was not recognition for excellence in the field of visual art. We concur with that conclusion. While UNICEF may be a major international humanitarian organization with a significant presence in Canada as asserted by counsel, it is not an institution that judges and issues awards recognizing excellence in the field of art.

Counsel further asserts that the Escape to Create artist-in-residence is a national competition open to qualifying artists around the country and is a merit-based process. 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 only materials in the record regarding this program provide:

Escape to Create is a month long artist in residence program held in Seaside, Florida each January. Artists from varying disciplines are chosen through an application process to work on a specific project throughout their time here. At the end of the month, artists are required to do a form of community service by showing their work completed during the residency.

While nothing in the materials suggests that the program is limited to local artists, not every competitive program open to applicants nationwide can serve to meet this criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the prize or award be nationally *recognized*. The record does not demonstrate that the most experienced and renowned artists seek to participate in artist-in-residence programs, which appear to be more akin to training internships for promising artists.

The petitioner resides in an artist’s cooperative in New York City, Workspace, Inc. The petitioner submitted a letter from ██████████, President of the cooperative, asserting that the Department of Cultural Affairs approved the petitioner’s certification “based on his proven and extraordinary talent as a visual artist.” The record contains no evidence that ██████████ works for or represents the New York Department of Cultural Affairs. Rather, she works for Citigroup, Inc. The petitioner submitted his Artists Certification from the City of New York Department of Cultural Affairs, which reflects that it was issued pursuant to a New York City zoning law. Additional materials from the Department of Cultural Affairs reveals that the certification is for “the purpose of qualifying for joint living-working quarters in cities with populations of over one million.” A qualifying artist is defined as “a person who is regularly engaged in the fine arts, such as painting or sculpture.” The eligibility requirements are stated as follows:

1. The individual is engaged in the fine arts, not the commercial arts, including but not limited to painting, sculpture, choreography, filmmaking, and the composition of music, regularly and on an ongoing basis;
2. The individual demonstrates a serious, consistent commitment to his or her art form;
3. The individual is currently engaged in his or her art form;
4. The individual demonstrates a need for a large loft space in which to create his or her art. It should be noted that the word “professional” refers to the nature of the commitment of the artists to his or her art form as his or her primary vocation rather than the amount of financial remuneration earned from his or her creative endeavor.

Finally, the materials indicate that the “only legal significance that a letter of certification by this Department has is to evidence that an individual is qualified as an artist to live in a joint living-working space, where such use is permitted by law.”

The Answers to Commonly Asked Questions provided by the petitioner provide that the zoning law in question “permits fine artists working on a professional level who demonstrate a need for a live/work loft to reside in specific lofts zoned for manufacturing. Artist certification provides the document that equates the person named therein with a light manufacturer.” Another answer indicates that the applicant must generally have a professional body of work covering five years.

On appeal, counsel relies on [REDACTED]'s letter as evidence that the petitioner “was selected for this award because of his extraordinary ability, and the selection process considered his talent as a visual artist.” As stated above, [REDACTED] does not work for or represent the Department of Cultural Affairs. The materials from that Department clearly reflect that the petitioner was certified as a practicing artist for eligibility to reside in joint living-working space pursuant to a zoning law. It appears that, rather than evaluate the quality of artwork, the Department merely ensures that the artist is engaged in the arts and has a need for a large loft space. As such, we find that this certification from a local city department is not nationally or internationally recognized, is not an award or prize and was not issued in recognition of excellence in the arts.

Counsel also asserts, for the first time, that the petitioner meets this criterion through the submission of a letter from [REDACTED], Principal of the Seaside Neighborhood School, advising that the petitioner was a guest speaker at the school and was the only member of the Escape to Create group invited back, at which time he performed a painting workshop. Once again, an invitation to perform a workshop at a charter school is not a prize or award. Moreover, the record lacks evidence that the charter school is nationally recognized as an entity that issues awards for excellence in art such that artists nationwide aspire to win awards from this school.

Finally, the letter from [REDACTED] of the Museum of Life and Science in Durham, North Carolina, states:

We recently invited [the petitioner] to participate in our upcoming new permanent outdoor exhibition, Catch the Wind. We researched endless book titles that celebrated the wind and upon discovery of [the petitioner's] children's story, Flight of the Whirligigs, it immediately made our short list. [The petitioner] flew to North Carolina last year to do a voice recording reading of his book. The recording will be on permanent display for our visitors to enjoy when they visit our wind park scheduled to open in the Spring of 2007.

On appeal, counsel notes that the petitioner's book is a picture book that the petitioner illustrated and emphasizes that it is on permanent display. As with much of the evidence submitted to meet this criterion, the invitation to participate and inclusion of the petitioner's voice recording is not a prize or award. Moreover, [REDACTED] indicates that the petitioner's voice recording will be "on permanent display" but does not state or imply that the petitioner's illustrations from the book will also be on permanent display. Even if the petitioner's entire book, including illustrations, was part of the permanent exhibit, the display of visual arts at an artistic exhibition or showcase is a separate criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vii). If the display of an artist's work was an award or prize, it can be presumed that the regulations would not include a separate criterion for display. Thus, we will consider this evidence again below under the appropriate criterion.

In light of the above, the evidence submitted to meet this criterion falls far short of meeting the regulatory requirements set forth at 8 C.F.R. § 204.5(h)(3)(i).

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.

Prior to examining the evidence, it is once again instructive to review the regulatory requirements for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(ii). First, the petitioner must demonstrate a membership in an association. Second, the association must require outstanding achievements of its members. Finally, recognized national or international experts in their disciplines or fields must select the members.

Initially, counsel relied solely on the petitioner's residence in the artists' cooperative, Workspace, Inc. Counsel emphasized the letter from [REDACTED], discussed above, asserting that the Department of Cultural Affairs certified the petitioner based on his proven and extraordinary talent as a visual artist. The petitioner submitted the evidence about certification discussed above under the previous criterion.

The director noted the four requirements for certification quoted above and concluded that these were not outstanding achievements. On appeal, counsel reiterates the statement by [REDACTED]

As stated above, [REDACTED] is not an employee or representative of the Department of Cultural Affairs. Her implication that certification requires extraordinary ability directly conflicts with the materials from the Department, which expressly provide that a certified artist must only demonstrate ongoing work as an artist and five years of work in that field. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if [REDACTED], who does not indicate that she was personally involved in the decision to certify the petitioner, is correct that the petitioner individually was certified based on his extraordinary talent, at issue are the *requirements* for membership. The requirements for certification do not include any achievements that can be described as outstanding. Merely working in the field for five years and continuing in that field is not an outstanding achievement. Finally, nothing in the record suggests that these decisions, made pursuant to a zoning law, are made by nationally or internationally recognized experts in the field of visual arts. Rather, the Answers to Commonly Asked Questions indicate only that “arts professionals” consider the applications for certification.

On appeal, counsel asserts for the first time that the petitioner meets this criterion through his membership in The Contemporaries, an art and social club. The petitioner submits Internet materials about The Contemporaries, which indicate: “Membership in The Contemporaries is by invitation only.” The petitioner also submits a letter from [REDACTED] Executive Director of The Contemporaries, confirming that The Contemporaries would be exhibiting the petitioner’s work in the fall of 2007 and that the petitioner was invited to membership “based on his outstanding work and his vision as an artist.”

First, the record contains no evidence that the petitioner was a member of The Contemporaries as of the date of filing, the date as of which the petitioner must establish eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Second, at issue is not whether the petitioner was selected based on his outstanding achievements or whether membership is by invitation only, but whether The Contemporaries requires outstanding achievements for membership. The official guidelines for membership are not in the record. The Internet materials, while indicating that membership is by invitation only, also indicates that the club “exposes young professionals to the latest in contemporary art and culture.” Finally, the record contains no evidence that those who select prospective members are nationally or internationally recognized experts in the visual arts.

In light of the above, 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 reviews of his children's book, *Flight of the Whirligigs*, in the teacher's magazine *Connect*, *CM Magazine*, *Resource Links*, *Quill and Quire* and *The Sunday Herald*. The reviews all date from 1999 and 2000. The petitioner also submitted an undated article about his "historic Paris apartment" in *Canadian Home and Country Magazine*, a brief bio in a 1995 issue of *Applied Arts Magazine* and 1993 and 1998 articles about the petitioner in the *Halifax Herald* and the *Hamilton Spectator*.

The director concluded that the book reviews were not about the petitioner's work in the visual arts, that the article about the petitioner's apartment was not about the petitioner's work as an artist and that the petitioner had not established that the remaining articles appeared in major media.

On appeal, counsel notes that the petitioner's "award-winning" book is an illustrated book and, thus, the reviews demonstrate the "widespread acceptance and strong versatility of the Petitioner's talent and ability in the visual arts." As stated above, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record contains no evidence that the petitioner's book has won any awards.¹ Counsel further asserts that the discussion of artistic influences in the article about the petitioner's apartment demonstrates that the article relates to the petitioner's field of visual arts.² In addition, counsel asserts that *Applied Arts Magazine* and *Quill and Quire* are major media. The petitioner submits new evidence regarding these publications. Finally, the petitioner submits four new articles, one of which postdates the filing of the petition. As stated above, the petitioner must establish his eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

We acknowledge that the petitioner's book is an illustrated book that prominently features the petitioner's paintings. Thus, we withdraw the director's concern that the book reviews do not relate to the petitioner's field. That said, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the alien relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C), which requires only evidence of published material about the alien's work. Book reviews, especially in large compendiums of children's book reviews for teachers, cannot be said to be "about" the authors.

The article in *Canadian Home and Country*, while primarily about the petitioner's apartment, does mention that the petitioner is a painter and notes that a grouping of his fruit portraits are featured in the living room. The magazine is dedicated to home decorating and country food. It focuses on the petitioner's apartment décor and mentions only in passing that the petitioner is a painter. While it mentions that his own work is displayed in the apartment, it mentions several other items that are part

¹ As stated above, inclusion in an exhibit on wind is not an award or prize.

² Counsel asserts that the director erred in stating that the apartment is in Paris and then quotes a paragraph discussing the Seine as part of the local landscape. The article further asserts that the apartment is a "Paris pied-à-terre" located in the heart of Paris' most historic neighborhoods, that the wood paneling was removed during the last days before the French revolution and that the apartment "bears the history of the generations of Parisians who have occupied its floors." It is clear that the apartment is in Paris, not Toronto as claimed by counsel.

of the décor. The article cannot be said to be “about” each item that is mentioned as part of the décor. Finally, the record lacks evidence as to when this article was published. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the date of any published material.

The articles in the *Halifax Herald* and the *Hamilton Spectator* are both primarily about the petitioner relating to his work. While counsel asserts on appeal that the director ignored the article in the *Hamilton Spectator*, she does not explain how it constitutes major media. The petitioner has not submitted any evidence that either publication enjoys a nationally significant circulation or other evidence demonstrating that these publications constitute major media. Thus, these articles cannot serve to meet this criterion.

The petitioner did provide materials from the website for *Applied Arts Magazine* indicating that it is “Canada’s premiere magazine of visual communications.” The magazine boasts that it is “your window on the very best creative work produced in the country and abroad.” The petitioner, however, was featured in this magazine in 1995. Thus, this coverage is not evidence of sustained national or international acclaim 11 years later when the petition was filed.

The published materials in the record before the director ended in 2000, six years before the petition was filed. This evidence is not consistent with sustained national or international acclaim on November 20, 2006, the date the petition was filed. On appeal, the petitioner submits a 2000 article in *Saturday Night* about the petitioner’s Toronto home, a 1995 issue of *Canadian Select Homes* that includes a photograph of someone else’s home that includes one of the petitioner’s paintings, a 2002 article in *Century Home* about the petitioner’s Toronto home and a 2007 article in the *Walton Sun* about Escape to Create that mentions the petitioner’s participation in that program. The articles about the petitioner’s Toronto home are no more persuasive than the article about the petitioner’s Paris apartment. The petitioner is not seeking classification as an extraordinary interior designer. Moreover, the most recent article is from 2002, four years before the petition was filed. The magazine that pictures someone else’s home, including one of the petitioner’s paintings, does not contain published material about the petitioner. Rather, the story is about someone else’s home. Finally, the petitioner has not demonstrated that the *Walton Sun* is a nationally circulated newspaper or otherwise demonstrated that the paper is major media. Moreover, the article is primarily about the Escape to Create program, not the petitioner. Regardless, as the article postdates the filing of the petition, we cannot consider it as evidence of the petitioner’s acclaim in 2006 when the petition was filed. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In light of the above, the published materials submitted, while not negligible, are not sufficiently indicative of national or international acclaim as a painter in 2006 when the petition was filed.

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.

Initially, counsel asserted that, as Vice President of Workspace, Inc., the petitioner judges the applications and work of artists applying for residence in the cooperative. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As evidence to support this assertion, counsel references the letter by [REDACTED], who confirms that the petitioner is Vice President of the cooperative but fails to indicate what those duties entail. The director repeated counsel's assertion, but reached no conclusion as to whether the petitioner meets this criterion. On appeal, counsel states that the director "seems to suggest that the duties do not constitute judging the work of others in the same or allied field. They do."

As stated above, however, [REDACTED] does not assert that the position of Vice President involves judging the work of prospective members of the cooperative. Even if it did, serving in this capacity for one's own cooperative is not evidence indicative of or consistent with any recognition beyond this local cooperative.

For the reasons discussed above, the petitioner has not established that he meets this criterion.

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

Initially, counsel asserted that the petitioner meets this criterion through the publication of his children's book, his commission with the United Church of Canada, his paintings, jigsaw puzzles and other commercial items such as t-shirts and greeting cards. The record contains letters, contracts and photographs of commercial items demonstrating these accomplishments. The director concluded that the record lacked testimonials from museums placing the petitioner's work at the top of the field and evidence of the petitioner's influence in the field. On appeal, counsel asserts that the petitioner did submit a letter from a museum, the Museum of Life and Sciences in Durham, North Carolina and that the regulation does not require letters from museums or evidence that the petitioner is influential in the field. Counsel then asserts that widespread acceptance, sustainability over a long period and versatility are what demonstrates extraordinary ability in the visual arts.

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. Given that language, we concur with the director that to be considered a contribution of major significance in the field of visual art, the work must be demonstrably influential in the field.

All of the examples provided by counsel, the petitioner's book, commission to create artwork for the United Church of Canada, design of t-shirts and other commercial items, are examples of the petitioner's ability to make a living in the field. We are not persuaded that simply being able to secure contracts and commissions is a contribution of major significance to the field of visual arts

that sets the petitioner apart from any other moderately successful artist able to make a living in his field.

The record includes several letters,³ all of which provide general praise and reference the petitioner's commissions and exhibitions. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information, or is in any way questionable. *Id.* at 795; *see also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. None of the letters in the record explain how the petitioner's work has contributed to the field of visual arts in general.

Without additional evidence demonstrating how the petitioner is recognized for his influence in the field, we cannot conclude that the petitioner meets this criterion.

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

The director noted that the petitioner did not claim to meet this criterion and the record contains no evidence relating to it. Counsel concurs with this assessment on appeal.

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

The petitioner submitted promotional materials for several solo and group exhibits. ██████████ a product developer, asserts that Roots, a leading lifestyle/fashion apparel firm, commissioned 14 images for an upscale t-shirt campaign to showcase key U.S. and Canadian cities. The petitioner also submitted photographs of puzzles and other commercial items as well as UNICEF promotional material bearing his paintings. ██████████, producer for *Arts & Minds*, asserts that the petitioner "became a regular exhibitor at the Theodora gallery" in Toronto. ██████████, a gallery owner, confirms that she has featured some of the petitioner's items at her gallery in Seaside, Florida and will do so again.

³ The letter purportedly from ██████████, a producer at CBC Radio-Canada, is unsigned and, thus, has no evidentiary value.

The director concluded that the petitioner had not demonstrated the national significance of his exhibitions, which mostly occurred where the petitioner was residing at the time. The director further asserted that artists who make a living in the field must display their work for sale and that exhibitions for sale carry less weight than exhibits for viewing.

On appeal, counsel asserts that the regulation does not require evidence of the national significance of the exhibitions or showcases. Counsel further asserts that the regulations do not preclude local exhibitions and notes that the petitioner's work includes landscapes, which are more popular locally. Counsel then asserts that it is not easy to secure gallery space to display one's work for sale.

The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. While the regulation may not explicitly require exhibitions at nationally significant venues, it remains that it is the petitioner's burden to demonstrate how the evidence submitted is consistent with the statutory standard. Exhibitions that are limited to local venues where the alien resides carry less weight than venues with a national scope and clientele. Local exhibitions do not demonstrate that gallery owners nationwide recognize the petitioner and cannot garner the petitioner any national exposure.

That said, there is some evidence that the petitioner's visual art is on permanent display at the Museum of Life and Science, although it is not clear if the display is limited to the voice recording of the beneficiary's book. Moreover, the petitioner's work is credited in a magazine and has appeared on promotional materials and merchandise for major organizations. While these displays are not exactly artistic showcases or exhibitions, they provide the petitioner with greater exposure and we are satisfied that they complement the evidence of actual exhibitions and showcases. In light of the evidence in the aggregate, we are satisfied 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.

Counsel initially asserted that the petitioner meets this criterion through his 50 percent ownership in his own company that was initially established to "create, introduce, promote and build" the petitioner's brand. The petitioner submitted a business plan for this company. Counsel further asserted that the petitioner meets this criterion as Vice President of the cooperative Workspace, Inc. In addition, counsel asserted that the petitioner performed a leading or critical role for Roots through his design of 14 t-shirts for the company.

The director concluded that the petitioner had not demonstrated that his own company enjoyed a distinguished reputation but failed to consider counsel's other claims. On appeal, counsel asserts that the petitioner need not demonstrate that his own business enjoys a distinguished reputation as long as he has played a leading or critical role for an entity with such a reputation. Counsel asserts, without explanation or reference to evidence submitted, that Workspace, Inc. has a distinguished reputation. As

stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel references the letter from [REDACTED] as evidence of the petitioner's role for Roots and the reputation of that company.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position is indicative of, or consistent with, national or international acclaim. Moreover, as is clear from the language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the organization or establishment must have a distinguished reputation. As the ultimate statutory standard for the classification sought is national or international acclaim, we interpret distinguished reputation as a distinguished reputation nationally.

Counsel initially asserted that the petitioner meets this criterion through his role in his own company. Thus, the reputation of his own company is at issue. The business plan cannot establish that the company already enjoys a distinguished reputation. Thus, while the petitioner clearly plays a leading or critical role for his company, he has not established that this company enjoys a distinguished reputation.

The record contains no evidence that Workspace Inc., a New York City artists' cooperative, enjoys a distinguished reputation. Thus, while Vice President may be a leading or critical role for the cooperative, it cannot serve to meet this criterion.

Finally, we do not contest that Roots enjoys a distinguished reputation nationally. According to Mr. [REDACTED], Roots has sales exceeding \$100 million annually. The record contains no sales data for the shirts designed by the petitioner. We note that [REDACTED] is not a representative of Roots, which has not provided a letter in support of the petition explaining the significance of the petitioner's role with that company. Without additional evidence, we cannot conclude that designing 14 t-shirts for one fashion campaign for a company whose sales exceed \$100 million annually is a leading or critical role for that company.

In light of the above, 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 director concluded that the petitioner claimed to meet this criterion but did not submit any evidence to support that claim. On appeal, counsel correctly notes that the petitioner did not claim to meet this criterion previously. While counsel is not persuasive that the director's oversight on this issue is evidence of his "intent desire to deny this case for whatever reason possible, despite the overwhelming qualifying documentation," we withdraw any inference that the petitioner has ever claimed to meet this criterion.

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

Counsel initially asserted that the petitioner meets this criterion by applying for a registered trademark, development of his own website, the application of his work to merchandise, and his “nonprofit fundraising and skill building” as demonstrated by his work for UNICEF and his community service project with Escape to Create. The director concluded that the petitioner was not a performing artist.

On appeal, counsel acknowledges that this criterion does not apply to the visual arts, but asserts that the evidence submitted to meet this criterion is comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). Counsel concludes:

In the same way that a performing artists [sic] documents commercial success by box office sales and sales of record, cassette, compact disks or videos, a visual artist documents commercial success with evidence that the artwork appeals to many diverse audiences; that the artwork is sustainable over a long period of time[;] and that the artwork is versatile in its applications. The documentation submitted in support of this criterion evidence[s] his commercial success as a visual artist.

We are not persuaded that the vague claims of success by counsel are remotely comparable to the specific objective evidence mandated under the regulation at 8 C.F.R. § 204.5(h)(3)(x). That regulation clearly requires actual sales numbers of either seats or specific media. Conversely, the record in this matter contains no sales data for the petitioner’s book, his t-shirts or other merchandise. A trademark is merely an intellectual property right. It is not indicative of any commercial success of the brand being trademarked. Finally, the petitioner’s ability as a fundraiser or community service activist is unrelated to his alleged acclaim as an artist and has no relation to this criterion.

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

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 visual artist 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 talent as a visual artist and some widespread exposure, but is not persuasive that the petitioner’s achievements set him significantly above almost all others in his 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.