U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 11 2007

EAC 05 131 50396

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 July 31, 2007, this office issued a notice of intent to dismiss the appeal. In this notice, this office noted that the petitioner was the beneficiary of two former petitions, one filed by an alleged religious organization and another by the petitioner's wife. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, sought to classify the petitioner as a religious worker and was denied on March 28, 1995 based in part on several inconsistencies and concerns about the legitimacy about the petitioning organization. The Form I-130, Petition for Alien Relative, was denied on February 28, 2002 based on several inconsistencies in the statements of the petitioner and his wife and a lack of persuasive documentation. The AAO noted, that should we make an independent finding that the petitioner had previously sought to be accorded immediate relative status as the spouse of a citizen of the United States by reason of a marriage determined to have been entered into for the purpose of evading the immigration laws, section 204(c) of the Act would bar the approval of the instant petition. The AAO also raised concerns regarding the evidence submitted to establish eligibility for the benefit currently being sought.

In response, the petitioner asserts that while he visited the religious organization that filed the Form I-360 petition in his behalf, he was unaware that it filed the petition in his behalf. He submits his own statements attempting to explain the inconsistencies between his statements and those of his wife before an immigration officer. The petitioner also submits affidavits from his wife's sister and a coworker of his wife. Finally, the petitioner submits photographs of himself and his wife as well as new evidence relating to his claim of eligibility as an artist of extraordinary ability. The new evidence postdates the filing of the petition.

For the reasons discussed below, we find that the petitioner sought immediate relative status based on a marriage entered into for the purpose of evading the immigration laws of the United States. Consequently, section 204(c) of the Act bars approval of the instant petition. Moreover, we further uphold the director's decision that the petitioner has not established that he is eligible for classification as an artist of extraordinary ability pursuant to section 203(b)(1)(A) of the Act.

Religious Worker Immigrant Petition

As stated in our July 31, 2007 notice, on September 27, 1994, the Faith Restoration Center, Inc. ("the center") filed a Form I-360 Petition for Amerasian, Widow or Special Immigrant seeking to classify the petitioner as a religious worker. Significantly, the petitioner did not admit that the petition had been

filed in his behalf on Part 4, Question 6 ("Has any immigrant visa petition ever been filed by or on behalf of this person?") of his instant Form I-140 petition even though he supported the Form I-360 with three of his own signed statements and a Form G-325. In addition, a complete copy of the petitioner's passport accompanied the petition.

As detailed in our July 31, 2007 notice, incorporated here by reference, the Form I-360 petition was supported by contradictory evidence regarding the dates, location and nature of the current self-petitioner's employment.

The Director, Vermont Service Center, denied the Form I-360 because the center had not demonstrated, inter alia, that the petitioner had the required two years continuous experience in a religious occupation or vocation or that the proffered position was a religious occupation or vocation.

The Forms G-325A in the record signed by the petitioner between 1997 and 2005 contain inconsistencies, stated in detail in our previous notice and list the petitioner's employment at, for example, Bonne Air Laboratory, Caribbean Pharmaceutical Supplies and two real estate companies. Significantly, while the matter before us involves a request for an *employment* based visa classification in the field of poetry, only the most recent Forms G-325A, signed and submitted with the instant petition and the corresponding Form I-485, Application to Register Permanent Residence or Adjust Status, indicate any employment in that field.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

We concluded that the petitioner's claims of employment on documents filed with the Immigration and Naturalization Service, now CIS, since 1994 have not been consistent.

In response, the petitioner asserts that his Guyanese friends in the U.S. recommended the Faith Restoration Center as a church with good teachings that was helping people prepare their papers for immigration benefits. The petitioner asserted that during the religious service, those who needed immigration benefits would be given a set of papers to sign and he "just went with it." He asserts that he "didn't think we were doing anything wrong." He insists that the forms were not explained to him and that he never paid any fees. Finally he asserts that he "stopped going to this church after a few months because [he] disagreed with how they were teaching Scripture." Regarding his employment, the petitioner merely states that "it is hard to pay the bills with just poetry," but does not explain the discrepancies in his work history as listed on his Forms G-325A.

The petitioner's account of the filing of the religious worker petition on his behalf does not acknowledge that a copy of his passport supported that petition and implies that this center was willing to pay to file immigrant petitions for everyone who attended a single service without collection of any fees. Even if we accepted his account, at best, it demonstrates the petitioner's willingness to sign unambiguous one-page forms without reading or understanding them to secure immigration benefits for which he does not know the eligibility requirements. The petitioner submitted no independent, objective evidence to resolve the inconsistencies regarding his employment and his affidavit submitted on appeal is insufficient to reconcile the discrepancies in the record.

Section 204(c) of the Act

Section 204(c) of the Act states, in pertinent part:

> [N]o petition shall be approved if –
>
> (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or
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> (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

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

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). Citizenship and Immigration Services (CIS) may rely on any relevant evidence in the record, including evidence from prior CIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.; Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). In

this matter, all of the documentation submitted in support of the petitions filed in the petitioner's behalf and the transcripts of the interviews with the petitioner and his U.S. citizen wife are in the record of proceeding. Thus, we are not relying solely on a previous determination.

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

In our July 31, 2007 notice, we advised the petitioner of the following facts and procedural history. The petitioner entered the United States on August 20, 1994 as a nonimmigrant visitor. On March 19, 1997, the petitioner married J- F-,* a U.S. citizen in New York. J- F- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on July 23, 1997.[1] On December 4, 2000, the petitioner and his wife appeared at the New York District Office for an interview with no evidence of joint assets or other joint documentation.

On February 27, 2002, the petitioner and J- F- reappeared at the New York District Office. As evidence of their nearly four years of marriage, they submitted purported joint tax returns, a joint lease renewal with their names in far darker print than the remaining text of the photocopy, a bank letter indicating that the petitioner and J- F- had been customers since 2000 and three photographs.

On that date, the record shows that the petitioner and J- F- provided significantly different answers to several important questions during an interview. Specifically, the petitioner only knew two of J- F-'s five sisters' names and did not know her brother's name. In fact, the petitioner did not know the name of her sister who served as witness at their wedding. J- F- knew of one of the petitioner's three sisters on his mother's side but did not know her name. J- F- asserted that the petitioner calls his mother while he stated that he only writes her and does not call. He stated that his children had never spent the night while J- F- stated that they had done so a year ago. The petitioner and J- F- also provided different days as to when the petitioner had last seen his children. J- F- stated that the petitioner had worked for the same real estate company since she met him in 1996 while he stated that he worked for a different real estate company since 1999. J- F- stated that there were two off-white nightstands while the petitioner stated the bedroom furniture was a dark wood color. J- F- stated that the petitioner and she did not have cable television while the petitioner stated that they did have cable television and that it was in her name. J- F- stated that she goes to church at the Truth Center on Schenectady and Faragut Road while the petitioner stated that she attends church on Foster Avenue.

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* Name withheld to protect individual's identity.

[1] On the Form I-130, July 23, 1997 is the first receipt date that has not been voided.

The New York District Director concluded that J- F- had not provided evidence, either documentary or by testimony given at the time of the interview, that there was, in fact, a bona fide marital relationship. Although J- F- filed a second petition for the petitioner, she and the petitioner failed to appear for the scheduled interview and that petition was also denied. She did not appeal either denial.[2]

In response to our notice, the petitioner submitted a statement attempting to explain the above inconsistencies and statements attesting to the bona fides of his marriage from his wife's sister and coworker. Specifically, the petitioner asserts that his wife was a private person who did not often visit with her family and that the petitioner did not press her for the names of her siblings. He explains that the only time he met the sister who witnessed their wedding was that day. He further asserts that J- F- only met his children, and not the rest of his family. In addition, he asserts that his previous wife, the mother of his children, refused to allow the children to spend the night with him, so he forgot that, a year prior to the immigration interview, there had been an exception. Regarding his employment, he asserts that he was never really "employed," but took listings from real estate companies that shared them with him. As he continued in the same area, J- F- was unaware that he had changed the company from which he received listings. Regarding the furniture, he asserts that he did not pick it out and that when he and J- F- later inspected it, they agreed her answer of "off-white" was not entirely correct either, although closer than his answer. Regarding the cable television, he asserts that there was a cable line that was cancelled but never turned off. He opines that J- F- denied having cable because she did not want to admit to getting cable without paying for it. He states that he did not know the VCR was broken because they hardly used it and did not talk about it. Finally, he notes that he and J- F- went to different churches; thus, he did not know the exact address of her church.

The petitioner submits several more photographs of himself with J- F- at their wedding and on four other unspecified occasions. The photographs are not dated and the petitioner does not discuss the significance of any of the pictured occasions (apart from the wedding.).

Finally, the petitioner submits a letter from his wife's sister, [redacted] and a form affidavit filled out by his wife's former coworker, [redacted] states that she met the petitioner not through her sister, but through his involvement in the community. [redacted] attests that the former couple was "truly married," but explains, "I did not spend much time with [the petitioner] and my sister, when they were married because I am not close to my sister." [redacted] states that the former couple lived together and she was invited to their home for Thanksgiving. Neither [redacted] nor [redacted] provide probative, detailed descriptions of occasions where they visited the former couple, interacted with them or otherwise personally observed the petitioner's allegedly bona fide relationship with his wife.

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[2] We acknowledge that the petitioner requested that the contemporaneous adjustment application, Form I-485, be reopened. An interview was subsequently scheduled for April 22, 2004 and then rescheduled for July 19, 2004 pursuant to the petitioner's request. The New York District Director then declined the petitioner's request to continue rescheduling and denied the application.

The petitioner's attempts to explain and reconcile the discrepancies between his statement and that provided by his wife are not persuasive. For example, his explanation regarding cable television does not explain his answer at the interview that not only did they receive cable but that it was billed in her name. Moreover, the claim that he did not remember the color of the bedroom furniture because he did not pick it out despite allegedly living with that furniture for nearly five years is not credible. Finally, his explanation that his wife was unaware that he changed employers three years before the interview because he only received commissions from the companies rather than working directly for them is not persuasive. These mere attempts at reconciling the discrepancies absent competent objective evidence are insufficient. *See Matter of Ho,* 19 I&N Dec. at 591-92. Moreover, as stated above, the record shows that the previously filed Form I-360 petition also contained numerous inconsistencies that the petitioner has not overcome, compromising the petitioner's credibility and casting doubt on his explanations in this matter. *Id.* at 591.

The petitioner also fails to provide a persuasive explanation for the scarcity of joint documentation from his four years of marriage. In response to our concern that the record contains no evidence that the tax returns submitted were actually filed with the Internal Revenue Service (IRS), the petitioner acknowledges that they were not, in fact, filed with the IRS. Moreover, the petitioner indicated on his Form G-325A Biographic Information dated August 30, 2002, submitted in support of his 2002 adjustment application, that he worked for Delroy Real Estate from September 1997 through August 1998 and John Blue Real Estate from August 1998 through March 2002. His 1999 and 1998 tax returns, schedules C, however, list his business as a termite control and exterminator business. The August 1998 Pesticide Applicator Business Registration lists an address on Utica Avenue, which is not the address of the business listed on Schedule C or the petitioner's allegedly joint address with J- F-.

The petitioner and J- F- provided seriously divergent answers on several important questions at their February 27, 2002 interview. The petitioner's attempts to explain those answers are not persuasive and are not corroborated by independent objective evidence sufficient to overcome the inconsistencies cited in the foregoing discussion. *See Matter of Ho,* 19 I&N Dec. at 591-92.

In this case, the record shows that the petitioner's former marriage to J- F- was entered into for the purpose of evading the immigration laws and we are consequently barred from approving the instant petition pursuant to section 204(c) of the Act.

Extraordinary Ability

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 Employment-Based Immigrants,* 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 seeks to classify the petitioner as an alien with extraordinary ability as a poet. 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). In response to the director's request for additional evidence, counsel asserted that the petitioner's 2005 "Guyana Folk Festival Award" from the Guyana Cultural Association, New York, constitutes a major internationally recognized award.

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 serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). Nobel Laureates, the example provided by Congress, are selected from a global pool of nominees, are reported in the top media internationally regardless of nationality and are awarded $1 million cash prizes. While an internationally recognized award could 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.

The petitioner submitted a letter from the Guyana Cultural Association, New York, listing their seven criteria for the awards and indicating that 39 such awards would be issued at the 2005 Guyana Folk Festival. The record, however, contains no evidence that the award is a major internationally recognized award in the field of poetry, such as evidence that the selection of the awardees received international media attention in the general or trade media of multiple countries worldwide. Given the local and cultural focus of the association awarding the prize, it is not clear whether the prizes were limited to those of Guyanese origin or, even more specifically, those of Guyanese origin residing in the New York area. Clearly, an award with such a limited pool of candidates is not a major international prize on the level of a Nobel Prize in Literature, a Pulitzer Prize, or a comparable major, internationally recognized award in the petitioner's field of poetry. Regardless, the petitioner received this prize after the date of filing. Because the petitioner must establish his eligibility at the time of filing, his Guyana Cultural Association award cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

Barring the alien's receipt of a major internationally recognized 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. 8 C.F.R. § 204.5(h)(3). Initially, the petitioner submitted three reference letters from a professor at the University of Guyana, formerly a professor at Medgar Evers College, City University of New York (CUNY); the Deputy Chair for Developmental Skills at the Borough of Manhattan Community College, CUNY and the President of the Caribbean-Guyana Institute for Democracy in New York. On appeal, counsel asserts that these letters were ignored. While these letters praise the petitioner's poetry skills, they do not establish his notoriety outside of New York City.

Moreover, 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. Citizenship and Immigration Services (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 795-796. 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)). Ultimately, the petitioner must submit objective evidence sufficient to meet the regulatory criteria relevant to the classification sought, discussed below.

On appeal, counsel also cites *Buletini v. INS,* 860 F. Supp. 1222, 1234 (E. D. Mich. 1994) for the proposition that an alien meets his burden upon submitted evidence that is "sufficient to meet three of the criteria." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court

in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* This case did not arise within the Eastern District of Michigan. Accordingly, we need not recognize *Buletini* as even a persuasive authority in this matter.

Regardless, while we agree with the *Buletini* court that an alien need only meet three of the regulatory criteria, we do not understand the court to mean that an alien need only submit evidence *relating to* three of the regulatory criteria. Significantly, the court stated: "Of course, the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini,* 860 F. Supp. at 1234. In determining whether the alien meets a given criterion, the evidence must be evaluated as to whether it is indicative of or consistent with national or international acclaim if the statutory basis for this classification is to have any meaning.

It is the petitioner's burden to establish, with documentary evidence, that he meets every element of a given criterion. As will be discussed below, the petitioner has not submitted evidence documenting certain elements of the criteria he claims to meet, such as that his awards are "recognized" or that he has been covered in "major media." We note that 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 petitioner has submitted evidence that, he claims, meets the following criteria.[3]

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

The petitioner submitted evidence of a 2001 "International Poet of Merit Award" from the International Society of Poets, a 2001 Certificate of Congressional Merit "in recognition of outstanding leadership" and a 1982 "Award of Honour" from the Guyanese Minister of State for Education, Social Development and Culture issued at "Guyfesta." In response to the director's request for additional evidence, the petitioner submitted a City Council Citation from the City of New York dated October 9, 2005, the 2005 Guyana Folk Festival Award discussed above and an electronic mail invitation to register for an International Society of Poets convention where the petitioner would receive an Outstanding Achievement in Poetry Silver Award Bowl.

The director concluded that the petitioner's 1982 award was not indicative of sustained acclaim when the petition was filed in April 2005. On appeal, counsel asserts that the director failed to consider the remaining evidence relating to this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the awards be nationally or internationally *recognized.* It is the petitioner's burden to meet every element of a given criterion. The record contains no evidence regarding the significance of any of the petitioner's awards. For example, the record contains no evidence regarding the number of honor awards issued at "Guyfesta," the significance of this event or evidence that this event is covered in major Guyanese media. In our July 31, 2007 notice, we advised the petitioner that his last name appears altered on the 1982 "Guyfesta" award certificate and that the certificate was issued to his current last name even though he did not officially change his last name until 1986, according to a "Deed Poll" contained in the record. In response, counsel asserts that the petitioner received the 1982 certificate "altered" and that his "body of work corroborates his claim to an award for poetry in Antigua." Counsel has not explained why the certificate was issued to a name the petitioner would not officially have for another four years. Counsel also fails to explain his reference to Antigua when the award at issue was purportedly presented to the petitioner in Guyana. Regardless, as stated by the director, an award in 1982 of undocumented significance is hardly evidence of sustained national or international acclaim.

We next discuss the petitioner's certificates of recognition from the Honorable [redacted] first as a city councilwoman of New York and second as a congresswoman. The record contains no evidence that these certificates are in recognition of excellence *as a poet.* In our July 31, 2007 notice, we advised the petitioner that a Guide to Major Congressional and Presidential Awards, available at www.corzine.senate.gov, does not list certificates of congressional merit. A search of "certificate of congressional merit" produces no results on the U.S. House of Representative's website. In response, the petitioner submits a letter from the Honorable [redacted] affirming that she issued the citations to the petitioner on two occasions, once as a city council member and once as a U.S. Representative, "for his dedication to the community and public service." While she affirms his talent as a spoken-word poet, she does not indicate that her citations recognize excellence in poetry rather than community service. Thus, the petitioner has not established that these citations are prizes or awards for excellence in the petitioner's field of poetry. Moreover, the City Council of New York is not a national entity. Finally, even the congressional citation, deriving from a single congressional district's representative without the consent of a majority of the Congress (as occurs with a Congressional Gold Medal) would appear to recognize community service within that district rather than nationally.

In our July 31, 2007 notice, we also advised the petitioner that the registration materials for the 2007 convention for the International Society of Poets, available for download from [redacted] reveal that the society requires a registration fee of $595 for poets and $475 for each guest, which does *not* include travel or hotel accommodations. In addition, the Better Business Bureau of Greater Maryland has issued a report on Watermark Press, doing business as the International Society of Poets and Poetry.com. The report is available at [redacted] First, the report classifies the company as a "vanity press," which the report defines as a press that "publishes an author's work at the expense of the author and typically does not market or distribute their publications." The report notes that award recipients must pay $500 to $600 plus travel and hotel to receive their awards or $190 if they do not attend the convention. The report notes that "virtually everyone who submits a poem is nominated" and explicitly states that the awards are "not for poetry of merit." The petitioner's

response does not address this award. Thus, we conclude that the petitioner's 2001 award and his nomination to receive a silver bowl from the International Society of Poets are not evidence of nationally recognized awards for excellence in poetry.

Finally, as stated above, the 2005 award from the Guyana Cultural Association of New York appears to be limited to Guyanese artists in the New York area. Moreover, it was issued after the filing date in this matter. Thus, it is not evidence of eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. at 49.

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.*

Initially, the petitioner submitted several reviews and advertisements in the *Guyana Journal, Caribbean Life (*the Brooklyn Edition and the Queens/Long Island Edition*), Caribbean Impact,* the *Guyana Times* and *Outlet.* All of these newspapers except *Outlet* carry New York advertisements or provide New York contact telephone numbers. The petitioner has not established that their circulation extends beyond the Caribbean community in New York City or submitted other evidence that the newspapers are major media. The article in the *Guyana Times* is primarily about a tribute to [redacted] and simply lists the petitioner as one of the performers. Similarly, the article in the Queens/Long Island Edition of *Caribbean Life* is about a fundraiser for flood relief in Guyana and quotes the petitioner's performance in that context. In addition, the petitioner submitted a videotape of a 1996 interview with him in Antigua. In response to the director's request for additional evidence, the petitioner submitted a review of his compact disc. The review bears no indicia that it appeared in any publication.

In our July 31, 2007 notice, we advised the petitioner that "Up Close" does not appear professionally produced. In addition to questionable graphics and transitions, voices can be heard in the background at times. We were unable to verify on the Internet that a "Super Channel" exists in Antigua or that there is a show called "Up Close" hosted by [redacted] In response, counsel asserts that the videotape is a degraded copy and requests that we not impose U.S. production standards on "a low-budget Third World show taped 11 years ago." Counsel concludes that the remaining published materials are consistent with the petitioner being interviewed. Finally, the petitioner submits recent references to his upcoming or past performances in what appear to be local New York publications. All of this material postdates the filing of the petition and cannot be considered evidence of eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. at 49.

As stated above, the written materials either appear in local New York newspapers or are not primarily about the petitioner. Regarding the television interview, while we recognize that we cannot compare Antiguan television of 11 years ago with modern U.S. television news programs, it remains that the petitioner has not demonstrated that "Up Close" was a nationally televised show. Regardless, a single

interview of undocumented significance aired 11 years ago is not indicative of sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner did not initially claim to meet this criterion. In response to the director's request for additional evidence, the petitioner submitted a program for the 2005 Guyana Folk Festival Symposium listing the petitioner as a "facilitator" for Dance, Drum and Verse. The record contains no evidence regarding the responsibilities of a "facilitator" and counsel did not assert that this evidence was submitted to meet this criterion. On appeal, counsel asserts without explanation that the petitioner meets this criterion.

The record contains no evidence that the petitioner's responsibility as a "facilitator" included judging the work of spoken word poets or other artists. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner initially submitted *Reflections of Today* and *Where the Pomeroon Meets*, collections of the petitioner's poems. The copies submitted do not contain an ISBN number or other indicia of formal publication and distribution. The petitioner also submitted evidence that his poems have appeared in the *Guyana Times,* the *Guyana Journal, Guyana Forum, Caribbean Daylight* and the "Impact News" section of *Caribbean Impact.* As previously discussed, the petitioner has not established that these newspapers are major media rather than regional publications with a limited readership. Two of the petitioner's poems also appear in *The John Jay Times*, the newspaper of the John Jay College of Criminal Justice, CUNY. Finally, the petitioner submitted photocopies of pages purportedly from *The Nation* and *The Worker's Voice.*

The director concluded that the petitioner had only been covered in magazines and newspapers "intended for Guyanese readers in the U.S. or those interested in Guyana and its culture rather than major papers or trade media." On appeal, counsel states:

> The newspapers we submitted are the serious papers and trade media circulating in various countries around the globe, and they are well known to be so. For example, several of [the petitioner's] poems have been published in The Worker's Voice, which is one of the three most widely circulated papers in Antigua, published by the Antigua Labor Party and the Antigua Trades and Labor Union. For those with even a slight familiarity with newspapers outside the United States, a claim that this paper is related in any way to Guyana would be like claiming that the New York Times is a newspaper

> focusing on Canada and its culture because an article in it was written by a Canadian about literature in Canada.
>
> Additionally, we submitted several poems that were published in The Outlet, which is one of the most important and renowned papers in the Caribbean, previously published in Antigua (now defunct because of financial troubles.) In the 1970s, this newspaper made it known to the world that [the] Antigua government was engaged in an arms smuggling deal with apartheid South Africa despite an arms embargo. Since the seventies, this newspaper has uncovered numerous scandals around the world, and it is known around the world for doing so.
>
> Similarly impressive, we submitted evidence that [the petitioner's] poems have been published in The Nation, which is a leading publication in Barbados, the John Jay Times, the newspaper for the John Jay College of Criminal Justice, and Caribbean Life (CL), which is the largest circulated weekly newspaper in the New York City African/Caribbean American Community (numbering more than 3.5 million people.) As such, it is clear that [the petitioner's] works are not just important to the local Guyanese community.

While some of the petitioner's poems may have appeared in major media in Antigua and Barbados, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the publication of scholarly articles. The petitioner's poems are not scholarly articles about poetry. Thus, they cannot serve to meet the plain language requirements of this criterion.

Finally, the petitioner also submitted evidence that his poems have appeared in [redacted] anthologies. As stated in our July 31, 2007 notice and discussed above, however, the Better Business Bureau of Greater Maryland classifies [redacted] as a "vanity press," one that publishes work at the expense of the author. It does not appear to have a selection process based on merit. The report explicitly states that individuals "should not expect the general quality of the work in the anthologies to be of a high caliber." The petitioner's response to our notice does not address this concern. Thus, we find that inclusion in this vanity press is not evidence indicative of or consistent with national or international acclaim. Regardless of their form of publication, the petitioner's poems, as discussed above, are not scholarly articles in his field. Consequently, the petitioner does not meet this criterion.

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

The petitioner is listed as a writer attending the "Readings and Book Signings" and a spoken word performer for the 2004 Guyana Folk Festival in New York. The petitioner is also listed as a performer at the Gospel Extravaganza presented by the Caribbean-Guyana Institute for Democracy and the Commemoration of the 35th Anniversary of Guyana's Independence, "A Night of Spoken Word" sponsored by The Valley, Inc. All of these performances took place in New York City. The petitioner also submitted photographs of some of the above events and photographs allegedly of his performance

at a Guyana Flood Relief event in 2005 and a 2003 event hosted by the People's National Congress Reform, the opposition party in Guyana. The evidence does not indicate that any of the petitioner's documented performances were consistent with sustained national or international acclaim.

Initially, counsel asserted that the petitioner performed "at a press event for the release of *DefPoetry Jam, Season I*, New York City." In support of this claim, the petitioner submitted a photograph of himself with Russell Simmons, founder and owner of Def Jam Records at a publicity event at Tower Records. The photograph establishes only that the petitioner attended the event, which appears to be a public event. The photograph does not establish that the petitioner performed or was a featured celebrity. While the petitioner submitted materials promoting Def Poetry Jam performances and recordings, none of the materials mention the petitioner. Accordingly, the petitioner does not meet 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. Section 203(b)(1)(A)(i) of the Act, 8 U.S.C. §1153(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(2).

Review of the record, however, does not establish that the petitioner has distinguished himself as a poet to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has secured some exposure for his poetry, 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 petition must also be denied pursuant to section 204(c) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.