

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

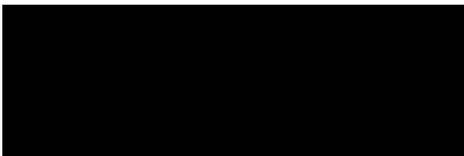


FILE: LIN 07 090 53794 Office: NEBRASKA SERVICE CENTER Date: OCT 05 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

UDeaDnk
Perry Rhew
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. The director also questioned the petitioner’s intent to continue working in her area of expertise.

On appeal, counsel submits a brief. As will be discussed in more detail below, we find that the director’s decision would have been bolstered by a discussion of the petitioner’s awards (beyond her subsidies), service as a local judge, and allegedly published thesis. Nevertheless, we concur with the director’s ultimate conclusion that the petitioner has not demonstrated her eligibility for the exclusive classification sought.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she 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 Beijing Opera performer and teacher. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

Initially, the petitioner submitted (1) a 1999 Certificate of Award from the State Council of the People’s Republic of China affirming an award of “governmental subsidies” in recognition of the petitioner’s “outstanding contribution to developing the culture of our country”; (2) the petitioner’s 1996 professional title as a “National First-Class Actress”; (3) a 1987 Certificate of Honor for Best Performance in the National Television Competition of Young Beijing Opera Artists; (4) a 2001 Certificate of Honor from the Chinese Ministry of Culture for a first class prize in the National Competition Performance by Young Outstanding Beijing Opera Artists; (5) a 2002 Certificate of Award from Chinese Central Television (CCTV) recognizing the petitioner’s best performance prize in the National Television Competition of Young Beijing Opera Artists; (6) a 1983 Certificate of Award affirming the petitioner’s receipt of first prize at the 1982 Performance in Basic Skills by Young Artists of Tianjin City; (7) a 1988 Certificate of Honor from the Cultural Bureau of Tianjin City for the best performance at the 1987 National Television Competition of Young Beijing Opera Artists; (8) Most Outstanding Asian Artist Award from the Chinese-American Arts Council, Inc. in New York and (9) certificates of appreciation.

In response to the director’s request for additional evidence, the petitioner submitted a 2008 certification from the Tianjin Youth Beijing Opera Troupe advising that the petitioner received a RMB 5,000 government subsidy in 1998 pursuant to her honorary lifetime title awarded to the top three

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

percent of Beijing Opera artists in the country and that her subsidy increased by RMB 2,000 per month in July 2007. Counsel asserted that the subsidy was set by the Chinese State Council, which is the executive branch of the Chinese government. Counsel submitted the Chinese Constitution as evidence of the identity of the Chinese executive branch. Counsel concludes that, regardless of the amount of the subsidy, an award from the executive branch is presumed prestigious. We will not presume the distinguished nature of an award from the entity that issues it.² Rather, it is the petitioner's burden to establish that a particular award is nationally or internationally recognized. The petitioner also submitted a document entitled "Some Provisions on Preferential Treatment of the Municipal Top-notch Talents, Outstanding Talents" dated June 9, 2004. The document indicates that the municipal top-notch talents will be awarded a one-time per year subsidy of RMB2,400 while outstanding talents will receive RMB1,200 and will also be "preferentially recommended for the subsidiaries from higher governments, such as provincial government and the State Council of the People's Republic of China."

The petitioner also submitted an online list of winners from the 1987 CCTV National Television Competition of Young Beijing Opera Artists. The petitioner received one of 25 best performance prizes and was one of five to receive the prize in the Qingyi Group. Additional online materials indicate that 25 best performance prizes were also issued in 2001 and an additional 25 won the prize of outstanding performance. A November 30, 2001 online article by the Xinhua News Agency promotes the upcoming National Competition Performance of Outstanding Young Beijing Opera Artists designed to promote the art of Beijing Opera, "creating the young Beijing Opera artists for the 21st Century." The shortlist of competitors was 140, indicating that more than one third of the competitors received prizes.

In addition, the petitioner submitted a November 11, 2006 article in *Jinwanbao* reporting that [REDACTED] residing in the United States, and the petitioner won a Lifetime Achievement Award and Most Outstanding Artist Award jointly issued by the Chinese-American Arts Council in New York, the Lincoln Art Center and the Cultural Affairs Department of New York City.

Finally, the petitioner submitted certificates affirming the selection of the petitioner's performance for the third degree prize as "the program I love best" among the performances on CCTV's Chinese New Year Eve specials in 1998, 2001 and 2005.

The director appears to have only considered the petitioner's subsidies and to have considered those as remuneration pursuant to the regulatory criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix). While we concur with the director that the subsidies are more appropriately considered under that criterion, the petitioner's other awards warrant discussion under this criterion.

The fact that the Chinese executive branch sets the remuneration level for performers at various levels of ability does not translate these "subsidies" into nationally or internationally recognized awards.

² For example, the Presidential Fitness Award in the United States is awarded by the executive branch but may be earned by every student able to meet specific fitness requirements. See www.presidentschallenge.org (accessed September 1, 2009 and incorporated into the record of proceeding).

Rather, as stated above, we concur with the director that the petitioner's subsidies are best considered under the remuneration criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix). Moreover, the record does not establish that the petitioner's title constitutes a nationally or internationally recognized award or prize rather than a skill or experience level.

Nevertheless, the petitioner also received youth awards between 1983 and 2002, ending five years before the petition was filed. By limiting the awards to youth, the competition excludes the most experienced and renowned Beijing Opera artists. Moreover, 50 awards were issued at these competitions, 25 at the same level as the awards won by the petitioner. Thus, we are not persuaded that the awards are indicative of or consistent with national or international acclaim, the statutory standard in this matter. In addition, the awards predate the filing of the petition by five years and, thus, are not indicative of *sustained* acclaim at the time of filing.

Finally, we acknowledge that the petitioner received the Most Outstanding Asian Artist Award in 2006. While the newspaper article in *Jinwanbao* asserts that the award was jointly issued by three entities, the certificate itself lists only the Chinese-American Arts Council. The record contains no evidence about this council, such as whether or not it includes distinguished judges with expertise in Beijing Opera, or how they select awardees. While the award presentation was reported in one newspaper, the record contains no evidence that the selection of the awardees is an anticipated event in the Beijing Opera community or otherwise nationally or internationally recognized.

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of her membership in the All-China Youth Federation and the Research Association for Cheng-Style Beijing Opera. ██████████ of the Chinese Theater Association, asserts that the petitioner "became a member [of the association] when she was only a teenager, which sufficiently demonstrates that the amazing achievements [the petitioner] has made in the art of Beijing Opera." ██████████ asserts that the association is composed of eminent playwrights, directors, actors, set designers, theater musicians, theater theorists, theater critics, theater educators, theater managers and theater leaders throughout China. ██████████ does not, however, provide the exact requirements for membership.

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires not only evidence of memberships, but evidence that those memberships are restricted to those able to demonstrate outstanding achievements as judged by recognized national or international experts. As the petitioner has not submitted the bylaws of the associations of which she is a member or other official documentation from the associations listing their membership requirements, the petitioner cannot demonstrate that she 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 director stated that “at least some of the publications in which the petitioner has been mentioned do rise to the level of ‘major media.’” As the director did not further address this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii), the director appears to have concluded that the petitioner meets this criterion. A mere “mention” of the petitioner, however, is insufficient. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) expressly requires that the published material be “about the alien . . . relating to the alien’s work.” Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring evidence about the alien’s work). Moreover, we must consider whether the evidence submitted is indicative of *sustained* acclaim in 2007 when the petition was filed. Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires information about the title, date and author of the material and that foreign language published material be accompanied by a translation. The regulation at 8 C.F.R. § 103.2(b)(3) requires that translations be complete and certified. As such, more discussion of this criterion is warranted. We will first address the journal publications, some of which appear to be collections of biographies, and conclude with a discussion of the newspaper articles.

Initially, the petitioner submitted foreign language journals, some of which appear to be collections of biographies. A 1998 publication is labeled as *Beijing Opera of China* and appears to include a brief section entitled “Introduction of New Star” that includes photographs of the petitioner. The petitioner did not submit a complete translation, certified or otherwise, of the page that is purportedly about her. The record also contains an undated publication labeled as the table of contents for *Traditional Operas of China*. The chapter beginning on page 52 is labeled as “[The petitioner] is Coming Back.” Page 52 was not submitted and the record does not contain a certified translation (or any complete translation) of this material. The petitioner also submitted the table of contents and page 24 of *Contemporary China*. While this material is undated, the petitioner’s brief biography on page 24 is in both Chinese and English. The petitioner also submitted a 1999 volume of a publication labeled as *Biography of Celebrities* and page 65 of this publication, which is labeled as “Smart and Intelligent, [the petitioner].” The photograph on the cover of this publication is identified as the petitioner. The petitioner did not submit a certified translation (or any complete translation) of this material. The petitioner is also the cover story in a 1999 edition of *Writers and Artists in China*. While the petitioner provided the author of this story, the petitioner did not provide a complete translation, certified or otherwise.

The petitioner did not submit the necessary certified translations (or any complete translations) of the above materials. In most cases, the record does not identify the authors pursuant to the requirement at 8 C.F.R. § 204.5(h)(3)(iii). As the petitioner did not submit the initial required evidence relating to this evidence pursuant to 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3), it cannot be considered. Moreover, the petitioner has not established that these publications can be distinguished from the vanity press-type bibliography dictionaries such as “Who’s Who.” The petitioner did submit a self-serving chart purporting to list the circulation of these publications. While the circulation of some of the newspapers listed on the chart, discussed below, are also documented on the website of the World

Association of Newspaper, submitted by the petitioner, the circulation of the publications discussed in the above paragraph is not similarly documented in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Finally, all of the above materials that are dated predate the petition by at least eight years and, thus, are not indicative of sustained acclaim in 2007 when the petition was filed.

The petitioner also submitted the covers of the following publications where the cover photograph is identified as the petitioner: a 1997 edition of *Artists*, an undated issue of *Beijing Opera of China*, a 1995 edition of *Traditional Operas of China* and a 1998 issue of *Contemporary China*. The record contains no text (originals and certified translations) of authored material about the petitioner copied from inside these publications. Even if the publications did contain written material about the petitioner inside, the petitioner has not established that these publications are distinguishable from large scale bibliography dictionaries. As with the above publications, the petitioner's self-serving chart purporting to document the circulation of these publications is insufficient. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, the dated publications all precede the filing of the petition by at least nine years and, thus, cannot be considered evidence of *sustained* acclaim in 2007 when the petition was filed.

The petitioner also submitted an article by the petitioner's mentor, [REDACTED] in a 1996 issue of *Research of Art* entitled "Talk About My Apprentice, [the Petitioner]." A separate article in this publication is entitled "[The Petitioner] is Walking to Us." As with the other materials submitted initially, the petitioner did not provide a complete certified translation of these articles. Moreover, the petitioner did not provide the circulation data for this publication or other evidence suggesting that it is a professional or major trade publication or other major media.

In light of the above, while some of the materials discussed above may be primarily about the petitioner, the petitioner did not submit the required certified translations of these materials, the circulation data or other evidence that the publications constitute professional or major trade publications or other major media. In addition, they all predate the petition by several years and are not evidence of *sustained* acclaim in 2007.

We will now consider the newspaper articles submitted. The petitioner initially submitted a December 16, 2005 article purportedly in *Jinwanbao*. The article purports to be about the petitioner's return from performing in Argentina. The petitioner did not submit a complete certified translation of the article as required under 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). As such, we will not consider this evidence. As stated above, in response to the director's request for additional evidence, the petitioner submitted a November 11, 2006 article in the same paper about the issuance of awards to the

petitioner and another individual in New York. The petitioner submitted the necessary certified translation of this article.

The response to the director's request for additional evidence also included numerous reviews and announcements of upcoming shows/events in which the petitioner performed, most with complete certified translations. In addition, the petitioner submitted a December 18, 1991 one-paragraph article in *Jianfang Ribo* that can be said to be "about" the petitioner relating to her work. Also, a January 5, 1985 article in *Tianjin Youth Daily* purports to be about the petitioner but the petitioner did not submit a complete translation of this article. While the petitioner's self-serving chart indicates that *Jianfang Ribo* is published in Shanghai and has a national circulation of 550,000 and that *Tianjin Youth Daily* is published in Tianjin and has a national circulation of 30,000 per day, the record lacks evidence that either publication has a significant circulation outside of Shanghai or Tianjin or other evidence that these publications are professional or major trade journals or other major media. Moreover, these two articles about the petitioner predate the petition by 16 years or more and, thus, cannot be considered to be indicative of *sustained* acclaim.

The only articles in the five years preceding the filing of the petition are an October 30, 2006 photograph of a scene (including the petitioner and other actors) from [REDACTED] in *Shanxi Life Morning News*, an October 26, 2006 review of [REDACTED] in *Xinmin Evening News* praising the performances of the petitioner and others, an August 24, 2007 review of the same show in *Daily Express* and a 2008 review in *Jinwanbao* of [REDACTED] noting the petitioner's role in this performance. None of these articles are about the petitioner relating to her work. Specifically, a review of a show is not published material about the actor.³ In addition, the 2007 and 2008 reviews postdate the filing of the petition and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In summary, the articles that can be considered to be "about" the petitioner appear in biographical dictionaries, other trade journals or newspapers with an undocumented circulation and predate the petition by several years. The majority of the newspaper articles, and all of the newspaper articles appearing in major media or in the last five years and accompanied by complete certified translations, are not "about" the petitioner. Thus, the petitioner has not established that she meets 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.

In response to the director's request for additional evidence, counsel asserted that the petitioner had been "invited to serve as [a] judge or guest host for many times [sic] in some important competitions or programs." The petitioner submitted invitations to serve as a guest host for several television programs

³ *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008). Although we acknowledge that a district court's decision is not binding precedent, the decision underscores the fact that USCIS's interpretation is reasonable.

that postdate the filing of the petition. None of the invitations set forth any judging responsibilities. The petitioner has not explained how a guest host judges the work of others. Regardless, evidence that postdates the filing of the petition cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also submitted an invitation to perform at the Eighth Conference of the China Federation of the Literary and Art Circles in November 2006, prior to the filing of the petition. Once again, however, the invitation does not set forth any judging responsibilities. The petitioner also submitted a May 22, 2008 invitation addressed to the "leadership of Tianjin Youth Beijing Opera Troupe" to serve as a judge in the selection of young artists for a program organized by the Tianjin Television-Entertainment Channel. This invitation is not addressed to the petitioner and, as it postdates the filing of the petition, cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner did submit certification from the Arts Center of Tianjin City affirming that the petitioner served as a judge for the Tianjin Beijing Opera Competition sponsored by the center in 2006 and 2008. The 2006 judging duties predate the filing of the petition. The director did not address this evidence. On appeal, counsel reiterates the evidence previously submitted.

The record contains a single example of serving as a judge prior to the filing of the petition. The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.⁴ The petitioner judged a Tianjin Beijing Opera Competition. Without additional documentation of the significance of this competition, this one example of judging is not indicative of or consistent with any acclaim outside of Tianjin, where the petitioner resides.

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

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

Counsel asserts that the petitioner meets this criterion for the first time on appeal. Specifically, counsel asserts that the petitioner's thesis constitutes an original contribution of major significance. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The petitioner submitted a letter from [REDACTED] of the Second Troupe of Shanghai Beijing Opera Troupe and the petitioner's former classmate. [REDACTED] asserts that the petitioner's thesis on Cheng-style

⁴ *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

Beijing Opera was included in *Collection of Cai Xia*, published by the China Traditional Opera Press and on the websites of the Cheng-style Beijing Opera of Anhui University and the Beijing Opera of China. The petitioner submits what purports to be her thesis that bears no indicia of publication and does not appear to have been copied from a journal. The petitioner submits what purports to be the cover of a “Rainbow Collection” that includes the petitioner’s thesis. The cover bears no ISBN number and the record lacks evidence that this collection is a peer-reviewed, widely circulated journal. The petitioner did not submit any pages from this collection, such as the table of contents or the pages with the petitioner’s thesis. ██████ asserts that the petitioner provided “contributive research on inheritance and development of Cheng-Style Beijing Opera and proposed new theories for creation, which has exerted tremendous influence in the field of Beijing Opera.”

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. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

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. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are the most persuasive. ██████ provides no examples of the petitioner’s thesis being applied on a national scale in the development and creation of Cheng-Style Beijing Opera.

In light of the above, the petitioner has not established that she 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.

As stated above, the petitioner submitted what appears to be a manuscript purporting to be her thesis, a cover of what purports to be a journal in which the petitioner’s thesis is alleged to have been published and a letter asserting that the petitioner’s thesis has been “published” on two websites. The director did not address this evidence.

The record contains no information about the petitioner’s thesis downloaded from these sites.⁵ Primary evidence that the petitioner’s article has been published would be a copy of the article as published.

⁵ We were unable to access either website using the addresses provided by ██████

The unavailability or non-existence of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). The petitioner has not documented that her published thesis is unavailable pursuant to 8 C.F.R. § 103.2(b)(2)(ii). In fact, she submits what purports to be the cover of the journal that contains her thesis. Thus, she cannot rely on secondary evidence or affidavits. 8 C.F.R. § 103.2(b)(2)(i). In light of the above, the petitioner has not established that she meets this criterion.

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

While not addressed by the director, the petitioner's art has been showcased on Chinese New Year's television specials, most recently in 2005. This criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vii) applies to the visual arts. Even if we were to conclude that the petitioner's CCTV performances, promoted in the Chinese media, were comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), for the reasons discussed above and below, the record does not establish that the petitioner meets at least three of the regulatory criteria.

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

As discussed above, the petitioner submitted evidence that she has received specific government subsidies based on her skill/experience ranking as a national first-class artist. The Tianjin Youth Beijing Opera Troupe indicated that only three percent of artists in Beijing Opera have attained this title and, apparently, this subsidy. Municipal regulations for Zhangjiakou City, submitted by the petitioner, indicate that municipal talent will be recommended for subsidies from provincial and national government authorities. The petitioner also submitted two of the petitioner's employment contracts listing a lump sum payment of RMB100,000.

The director determined that the petitioner had not demonstrated how the petitioner's remuneration compared with others at the top of her field. On appeal, counsel asserts that the petitioner provided the amount of her subsidy.

At issue is whether the petitioner commanded high remuneration *in relation to others in the field*. Thus, the petitioner must provide not only evidence of her own remuneration, but also evidence of the top remuneration in the field nationally for comparison purposes. The bare assertion in the certification from the petitioner's work unit, the Tianjin Youth Beijing Opera Troupe, that the petitioner's subsidy is received by only three percent of artists in China would be have been bolstered by statistics documenting the distribution of wages in the petitioner's field in China. For example, the record does not establish that government subsidies, as opposed to the opera troupe, are the main source of remuneration for the top Beijing Opera stars nationally. Significantly, the petitioner's subsidies are small compared to the lump some payments provided in the employment contracts. Without evidence comparing her lump sum payments with the top lump sum payments nationally as might be documented by official statistics of opera artist compensation, we cannot conclude that the petitioner's overall remuneration is significantly high.

Even if we did conclude that the petitioner meets this criterion based solely on her subsidy, and we do not, for the reasons discussed above and below she would still not meet at least three criteria.

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

The petitioner initially submitted evidence that she has appeared on DVDs. In response to the director's request for "independent evidence" of the sales of these DVDs, the petitioner provided her own statement attesting to those sales. The director concluded that the petitioner had not demonstrated how the sales numbers compare with other DVD sales in the petitioner's field and stated that the petitioner's personal statements "would have been more useful to the USCIS had they been supported by independent evidence." On appeal, counsel asserts that the petitioner documented significant sales and high remuneration and submitted letters praising her contribution to the success of her troupe.

The regulation at 8 C.F.R. § 204.5(h)(3)(x) is very clear regarding the evidence that must be submitted to meet this criterion. Specifically, the petitioner must submit box office receipts, not submitted in this case, or evidence of cassette, compact disc or video sales. The petitioner's personal, self-serving statement regarding DVD sales is insufficient. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The petitioner's remuneration relates to the regulatory criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix) and has already been considered above. The reference letters are not the type of evidence permitted under 8 C.F.R. § 204.5(h)(3)(x).

In light of the above, the petitioner has not submitted the required evidence to 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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a Beijing Opera artist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a Beijing Opera artist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In addition, the director questioned whether the petitioner would continue to work in her area of expertise. Specifically, the director noted that the petitioner had documented her experience as a performer but intended to start her own training facility in the United States whereby she would provide

lectures and workshops. On appeal, counsel asserts that the petitioner's own statement is sufficient evidence of her intent to work in her area of expertise and that training is part of a Beijing Opera artists work since such skills are acquired through apprenticeships. Finally, counsel asserts that the petitioner also intends to continue performing.

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

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner indicates she plans to start her own company with start-up costs amounting to \$50,000. While we concur with counsel that a statement from the petitioner may suffice, we do not accept that we can never evaluate the reasonableness of that statement. The petitioner provides no explanation of how she calculated the start-up costs and she provides no evidence that she has \$50,000; rather she asserts that she plans to obtain art grants from unidentified private and public institutions. The record contains no evidence that any such entity has expressed an interest in providing such funding or that these entities typically fund start-up training facilities.

In addition, the regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." While an instructor and a performer certainly share knowledge of Beijing Opera, the two rely on very different sets of basic skills. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). Contrary to counsel's assertions on appeal, the petitioner's plan indicates she would primarily be training students rather than performing. The record contains no evidence that the petitioner has her own apprentice or has any experience training new Beijing Opera performers. Thus, the director's concerns regarding whether the petitioner's area of expertise includes training is valid.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.