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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B2

DATE: **APR 20 2012** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on August 11, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on September 13, 2010. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of news reporting, 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 that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submitted a brief and reference letters from (1) [REDACTED], the sales and product manager, International Sales and Marketing, of DPA Global Media Service in Hamburg, Germany, (2) [REDACTED], Owner of Snapper Media, and (3) [REDACTED], Co-Owner and Chief Executive Officer of Splash News and Picture Agency (hereinafter “Splash”), the petitioner’s employer since 1998. In his brief filed in support of the instant appeal, counsel asserted that the director erroneously found that the petitioner does not meet the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), and the commercial successes in the performing arts criterion under 8 C.F.R. § 204.5(h)(3)(x). For the reasons discussed below, the AAO finds that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner meets none of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3). As such, the AAO finds that the petitioner has not demonstrated that she is one of the small percentage who are at the very top of the field and she has not shown sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

## I. LAW

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of the evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under any of the ten criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

When counsel initially filed the visa petition on July 9, 2010, he asserted that the petitioner meets the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i). In response to the director’s Request for Evidence, counsel again asserted that the petitioner meets this criterion. In her August 11, 2010 decision, however, the director found that the evidence in the record does not support such a finding. On appeal, counsel has not challenged the director’s decision as relating to this criterion. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

*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.* 8 C.F.R. § 204.5(h)(3)(ii).

When counsel initially filed the visa petition, he claimed that the petitioner meets the membership in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii). In his response to the director’s Request for Evidence, counsel again asserted that the petitioner meets this criterion. The director concluded otherwise on August 11, 2010, finding that the petitioner has provided insufficient evidence showing that she is a member of any association that requires outstanding achievements of its members. On appeal, counsel has not challenged the director’s decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

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<sup>2</sup> Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

When counsel initially filed the visa petition, he claimed that the petitioner meets the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(iii). In his response to the director's Request for Evidence, counsel asserted that the petitioner was interviewed by a freelance producer of a German television network in an unspecified year, and provided a July 22, 2010 letter from [REDACTED], a TV producer and correspondent based in Los Angeles. The director concluded in her August 11, 2010 decision, however, that counsel's assertion is not supported by the evidence in the record and that the evidence does not support a finding that the petitioner meets this criterion. On appeal, counsel has not challenged the director's decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

*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. 8 C.F.R. § 204.5(h)(3)(iv).*

When counsel initially filed the visa petition, he contended that the petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv). In his response to the director's Request for Evidence, however, counsel did not continue to assert that the petitioner meets this criterion. In her August 11, 2010 decision, the director concluded that there is insufficient evidence in the record to support a finding that the petitioner meets this criterion. On appeal, counsel has not challenged the director's decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).*

When counsel initially filed the visa petition, he made no explicit assertion that the petitioner meets the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). In response to the director's Request for Evidence, counsel asserted that the petitioner meets this criterion, because she "was instrumental in the launching of Splash's 24/7 Text Feed RSS service." Counsel also for the first time asserted that the petitioner "developed the [text feed] idea in November 2008, liaised with clients around the world about the design of the service and launched the service in February 2009." To support his assertions, counsel pointed to an undated letter from [REDACTED] and documents listed under heading "D" of his response to the director's

Request for Evidence exhibit list.<sup>3</sup> The AAO finds that none of the documents counsel referenced or other documents in the record supports a finding that the petitioner meets this criterion.

In his undated letter, Splash's [REDACTED] stated that:

[The petitioner] has [ ] been instrumental in designing and launching Splash's very successful 24/7 Text Feed RSS service. [She] has been involved in this project from the very beginning back in November 2008 when it was first devised. Splash supplied clients around the world with a subscription news wire service proving up to 100 celebrity stories a day with a stock image. [The petitioner] liaised with the clients on a daily basis, including the news editors and editors of all the UK daily newspaper, to design a system that would be operational for all clients. She also interviewed and trained text feed writers and sub editors . . . .

The wire service has been a huge success since [Splash] launched it in February 2009 and [the petitioner] still oversees it on a daily basis as part of her duties. When other agencies saw the great product [Splash] had created, they too began formatting their own wire service. Once [sic] of our largest competitors WENN (World Entertainment News Network) quickly launched their [sic] own rival service in April 2009 after seeing what a great and pioneering product Splash and [the petitioner] had created from text and photos that were already generated . . . .

Although the letter states that the petitioner was involved in the text feed RSS service "when it was first devised," it provides neither a detailed description about the origin of the service, i.e., whether it was the petitioner or someone else who came up with the idea for the service, nor an account from the origination of the idea to the actual launch of the service. Moreover, even assuming that the petitioner were the first person within Splash to come up with the idea and to create the text feed service, the letter fails to show that in November 2008, no other news agencies had already created or developed a similar service or were in the process of doing so. In short, there is insufficient evidence showing that Splash's text feed service, even if it could be considered the petitioner's contribution, constitutes an original contribution. Indeed, in counsel's brief in support of the instant appeal, does not address the originality issue and simply states that the petitioner's "contributions are

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<sup>3</sup> The counsel's response to Request for Evidence exhibit list appears to contain mistakes. For example, although the exhibit list indicates that counsel submitted a letter from [REDACTED], he actually submitted (1) a July 17, 2010 letter from [REDACTED] the Owner and President of Splash, and (2) an undated letter from [REDACTED] Vice President of Development of FremantleMedia North America. Moreover, the first time counsel filed the undated letter from Splash's [REDACTED] was when he filed this appeal, not when he filed his response to the director's Request for Evidence, as asserted in his brief in support of his response to Request for Evidence and his brief in support of the instant appeal.

not only significant to her employer, but are of major significance to the field of entertainment journalism overall.”

Furthermore, although Splash’s [REDACTED]’s undated letter states that other agencies launched their own text feed service, the letter only provides the name of one of such agency, WENN. Other than this letter, there is no other evidence in the record that supports the assertion that an agency launched its text feed RSS service because of Splash’s launch. 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, even assuming some agencies did launch their text feed service because they saw from Splash the benefits of having such a service, the AAO cannot conclude that this practice of adopting a competitor’s practices renders Splash’s text feed RRS service a contribution of major significance in the entire field of news reporting. In short, there is insufficient evidence showing that Splash’s the text feed RSS service constitutes a contribution of major significance in the field of news reporting.

The remaining evidence similarly fails to establish that the petitioner meets this criterion. In his July 17, 2010 letter, [REDACTED], Owner and President of Splash, made no mention of the petitioner’s involvement in the developing or creating of Splash’s text feed RSS service. Rather, he stated that the petitioner is a text feed editor, who “writes news and feature articles on a regular basis and is responsible for the running of Splash’s Really Simple Syndication (RSS) celebrity text feed.”

Likewise, in his undated letter, [REDACTED], Vice President of Development of FremantleMedia North American and a former bureau chief of WENN, also made no mention of the petitioner’s involvement in the development or creation of Splash’s text feed RSS service. Most significantly, while having formerly worked at WENN, [REDACTED] does not state or imply that WENN launched a similar service because of Splash’s launch.

In his September 2, 2010 letter, [REDACTED], who did not claim to have ever worked for Splash, stated, without providing any details or bases for his knowledge, that “Splash’s text feed service has provided an innovative business model that has revolutionized the way news agencies distributed their content to their clients” and that the petitioner “introduced a new business model to Splash that has accessed an untapped market, the mobile client.” Finally, he states that competitors “have been forced to adopt similar services to the text news feed service in order to remain competitive.” He does not state or imply, however, that DPA Global Media Service, where he is the sales and marketing manager, has adopted a similar service. As previously noted, 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)..

Similarly, although [REDACTED] stated in her September 6, 2010 letter, that “Splash’s text feed service [is] an original and innovated business model that has advanced the international news media industry,” merely repeating the language of the statute or regulations does not satisfy the petitioner’s

burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at \*5 (S.D.N.Y. Apr. 18, 1997). Moreover, [REDACTED] did not state that the petitioner was the first person in the news reporting field to have thought of, created or developed a text feed service, nor did she explain how an increase in revenue and steady growth for both Splash and her company render the text feed RSS service a contribution of major significance in the entire field of news reporting.

Finally, as suggested by the use of the plural in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must show that she has made more than one original contribution of major significance in the field of news reporting. The use of the plural is consistent with the statutory requirement for extensive documentation. Section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that Splash's text feed RSS service constituted one of such contributions, the AAO cannot find that the petitioner had shown that she has made another original contribution of major significance in the field of news reporting.

Accordingly, based on the evidence in the record, including evidence not specifically referenced, the AAO finds that the petitioner has not submitted sufficient evidence showing that she has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of news reporting. *See* 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

When counsel initially filed the visa petition, he claimed that the petitioner meets the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), because her journalistic articles were published in a number of newspapers. In his response to the director's Request for Evidence, however, counsel provided no evidence showing that any of the petitioner's articles constitute a scholarly article, and in fact conceded that they "may not be scholarly . . . ." Based on the evidence in the record, the director found that the petitioner has not met this criterion in her August 11, 2010 decision. On appeal, counsel has not challenged the director's decision as relating to this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

When counsel initially filed the visa petition, he claimed that the petitioner meets the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), because the *Daily Mail*, a British newspaper, published a series of articles containing excerpts from "[REDACTED] and Me: My Autobiography," a book written by [REDACTED] and the petitioner. Counsel advanced the same position in his response to the director's Request for Evidence, asserting that publication in the *Daily Mail* constitutes a showcase, because the "*Daily Mail* provided a medium or vehicle in which to

display [the petitioner's] co-authored book." The director disagreed in her August 11, 2010 decision, in which she concluded that "the articles in the *Daily Mail* do not appear to mention the petitioner at all, giving the appearance that the excerpts were entirely the work of [REDACTED]. It cannot be said that this was an exhibition of the petitioner's work when those who read the work were not made aware of the petitioner's contribution."

The AAO agrees with the director. The record contains an incomplete copy of the article [REDACTED], published by *Daily Mail* in August 2001.<sup>4</sup> The article indicates only one author, [REDACTED], and makes no reference to the petitioner. Also, the article specifies that it is an "abridged extract from [REDACTED], published by [REDACTED] on September 10 at £16.99. © [REDACTED]. The article does not credit the petitioner for either co-authoring the book or the abridged extract. Although the AAO concurs with the director on this point, the AAO finds that an analysis of whether an "exhibition" or "showcase" of work not credited to the petitioner as part of the display is reflective of or can garner the artist any acclaim is more appropriate in a final merits determination.

Ultimately, this criterion requires the petitioner to present evidence of the display of her work at artistic exhibitions or showcases. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221 (citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008)). Thus, the exposure must constitute a display, the display must occur at an exhibition or showcase and the exhibition or showcase must be artistic in nature. Counsel has not explained his assertion that a book excerpt in a newspaper constitutes a "display" at an "artistic" "exhibition" or "showcase" as any of those terms are commonly understood other than to assert that "art is in the eye of the beholder" and should include entertainment related writing. The function of the book excerpt is to provide details as to [REDACTED] relationship with a famous athlete rather than to exhibit or showcase the petitioner's art.

Accordingly, based on the evidence in the record, including evidence not specifically referenced, the AAO finds that the petitioner has not submitted evidence of the display of her work in the field of news reporting at artistic exhibitions or showcases. See 8 C.F.R. § 204.5(h)(3)(vii).

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

When counsel initially filed the visa petition, he asserted that the petitioner meets the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), because as of March 2010, the petitioner holds the position of Head of News and Features and Text Feed Editor at Splash, and because her articles have appeared on the front page of *The Sun*, "one of the top 10 circulated newspapers in the world . . . ." In his response to the director's Request for Evidence, counsel asserted that Splash has

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<sup>4</sup> The right side of the first page of the article is missing and the left side of the second page of the article is missing.

a distinguished reputation in the field, because it “boasts over 3,660 clients in over 60 countries worldwide.” Although the director found in her August 11, 2010 decision that the petitioner has met this criterion, the AAO, upon reviewing all the evidence in the record, disagrees and concludes that the petitioner has in fact not met this criterion. *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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

The AAO finds that the petitioner has performed a critical role for Splash. According to Splash’s [REDACTED], the petitioner began working for Splash in March 1998, when she was hired as a reporter. He stated that:

[The petitioner] helped take the company from strength to strength from where it was just the three [people, including the petitioner], one photographer and an accountant back in 1998 to a global company with eight offices around the world with nearly 90 employees.

He noted that the petitioner assisted in opening Splash’s first satellite office in New York, “singlehandedly launched Splash’s real life features department in London,” and she was “instrumental in designing and launching Splash’s very successful 24/7 Text Feed RSS services.” He noted that the petitioner was “the only member of the Splash team who [he] would trust to interview and train new staff” in Splash’s real life features department in London, which was closed in November 2009, and that “without [the petitioner] Splash would not be the leading news agency in the world today.”

In his July 17, 2010 letter, Splash’s [REDACTED] stated that the petitioner plays a critical and leading role in Splash, because “[m]any news agencies world wide [sic] rely on Splash to provide them with current events in the entertainment industry, and [Splash relies] on [the petitioner] to provide those agencies with those current events.” In his July 29, 2010 letter, [REDACTED], Splash’s Miami Bureau Chief, stated that although he was presented with a number of awards, including the 2008 British Press Award for Scoop of the Year and the 2008 National Association of Press Agencies Award for Story of the Year, the petitioner “played a key and role [sic] critical role in [the stories’] selection, presentation and contextualization. She therefore deserves significant credit as a collaborator on these award winning projects.” In his June 21, 2010 letter, [REDACTED] stated that the petitioner “is well known and respected within the field of entertainment news” and that as Splash’s Head of News and Features, she is “in constant contact with the news feature and photo desks of all major newspapers and magazines in the US and UK.” In his undated letter, [REDACTED], a senior supervising producer at Extra TV, noted that at Splash, the petitioner “is akin to a gatekeeper of information, indicating what is and is not important and what news will be reported to news outlets around the world.” [REDACTED] Photo Director of American Media Inc. (AMI), also noted in his July 7, 2010 letter that the petitioner “is constantly dictating what news will be reported to news outlets around the world” and that he relies “on her to provide AMI with the most important

news stories and photographs of the day.” Based on the petitioner’s evidence, the AAO finds that the petitioner has performed a critical role for Splash.

The evidence does not, however, demonstrate that Splash enjoys a distinguished reputation. While neither the regulation nor existing precedent speak to what constitutes a distinguished reputation, Merriam-Webster’s online dictionary defines distinguished as, “marked by eminence, distinction, or excellence.”<sup>5</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner’s burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

In support of his assertion that Splash is an organization or establishment that has a distinguished reputation, counsel has provided a number of reference letters and other evidence. They include letters from (1) Splash’s [REDACTED], who in his July 17, 2010 letter stated that “Splash is the leading independent entertainment news and picture agency in America,” (2) [REDACTED], a former editor of the now defunct *News of the World* and the *Daily Mirror*, and a judge or contestant in various reality television programs in the United Kingdom and the United States, who stated in his June 21, 2010 letter that Splash “provides the hottest, and most up-to-date Hollywood stories and photos to millions of people around the globe,” and (3) [REDACTED], West Coast Bureau Chief of *Us Weekly*, who in her June 11, 2010 letter stated that “Splash is an industry leader and provider of the most up-to-date information regarding news about celebrities and the players in the entertainment industry.”

The ability to secure clients and readers cannot, by itself, establish eminence, distinction, excellence or a similar reputation in the field of journalism. The record lacks evidence that Splash has been recognized as distinguished in the industry through prominent awards or similar accolades independent of letters prepared in support of the petition. [REDACTED], Treasurer and Vice Chairman of the National Association of Press Agencies (NAPA) in Britain, asserts that NAPA has recognized articles the petitioner edited in Splash. Examples of these articles, according to [REDACTED] are “Jailed mum who killed her own baby speaks from behind bars” and “Best friends find out they are really long lost sisters.” The petitioner did not submit the awards themselves or any evidence that NAPA awards are evidence of eminence and distinction, similar to a Peabody Award. For example, the record contains no evidence that other media outlets cover the issuance of NAPA awards or other similar evidence that the industry recognizes the significance of NAPA awards. The photograph of [REDACTED] receiving the British Press Award for Scoop of the Year reveals that it was as a freelance writer for the *Daily Mirror* and the *Daily Mail*. The award does not reflect the reputation of Splash.

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<sup>5</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on March 27, 2012, a copy of which is incorporated into the record of proceeding.]

Even if the AAO concluded that Splash enjoys a distinguished reputation, it could not find that the petitioner has met this criterion. Based on the plain language of the criterion, the petitioner has to show that she has performed a leading or critical role for more than one organization or establishment that has a distinguished reputation. The petitioner has not made such a showing.

Although counsel asserted in his brief in support of the instant appeal that the petitioner has performed a leading or critical role for *The Sun*, the United Kingdom's biggest-selling daily newspaper, the AAO finds that the petitioner was one of *The Sun*'s unspecified number of reporters, and that her duties were similar to those of a reporter for a publication, who might have achieved some success. According to [REDACTED]'s June 4, 2010 letter, who was the petitioner's editor at *The Sun*, the petitioner's "extraordinary journalistic ability resulted in her stories gracing the front page of the Sun, a newspaper with a circulation of over 3 million, on multiple occasions. The selection of her stories for the front page of such a highly circulated newspaper is akin to winning an award." According to [REDACTED]'s June 21, 2010 letter, the petitioner had been a reporter with the *The Sun*, and she reported "directly to the Editor and was featured on the front page multiple times." Similarly, Ian Edmondson, a news editor of the now defunct *News of the World*, noted in his June 22, 2010 letter that during the petitioner's time "at *The Sun*, [she] was featured on the front page of this highly circulated newspaper multiple times. This is akin to winning a top national prize."

The petitioner, however, has not provided information on the number of reporters whose articles have appeared on the front page of *The Sun*, nor has she provided information on the frequencies of these reporters' articles appearing on the front page of *The Sun*. As such, the AAO cannot even evaluate how the petitioner's role fit within the overall hierarchy of the organization or the significance of the petitioner's contributions to *The Sun* beyond its obvious need to employ competent reporters who contribute print-worthy stories.

Accordingly, based on a review of all the evidence in the record, including evidence not specifically mentioned above, the AAO finds that the petitioner has not presented evidence showing that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. See 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

When counsel initially filed the visa petition, he contended that the petitioner meets this criterion, because she receives an annual salary of \$135,000 as Splash's Head of News and Features and Text Feed Editor, which is more than \$50,000 above the average salary of a top level experienced Level 4 editor in the Los Angeles area. In support of his assertions, counsel provided a number of documents, including a July 7, 2010 online printout, entitled "Online Wage Library – FLC Wage Search Results," Splash's [REDACTED]'s July 17, 2010 letter, and the petitioner's March 1, 2010 Employment Agreement. Although the director found in her August 11, 2010 decision that the petitioner meets this criterion, the AAO disagrees and concludes otherwise. See *Spencer*

*Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *see also Soltane*, 381 F.3d at 145 (the AAO may exercise *de novo* review).

The AAO finds that the petitioner has not established the salary or remuneration for services for someone who holds a position similar to the petitioner in the field of news reporting. Specifically, the online FLC Wage printout and the listed annual salary of \$80,309 is for someone who works as an editor, who “perform[s] variety of editorial duties, such as laying out, indexing, and revising content of written materials, in preparation for final publication.” This might be one part of the petitioner’s duties, but it is not all of her duties as Splash’s Head of News and Text Feed Editor.

According to Splash’s [REDACTED]:

As the Head of News and Features and Text Feed Editor, [the petitioner] is responsible for overseeing both the news and feature desks across the company and liaising with the reporters in all Splash offices around the world. She also writes news and features articles on a regularly basis and is responsible for the running of Splash’s Really Simple Syndication (RSS) celebrity text feed.

The petitioner’s job description, as provided by her employer, does not match that of an editor as defined in the online FLC Wage printout. As such, the AAO is without sufficient evidence to find that the petitioner’s salary of \$135,000 constitutes evidence that she has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Moreover, the information contained in the online FLC Wage printout is limited to the Los Angeles, Long Beach, Glendale areas in California. As such, even if the AAO were to find that the petitioner worked as an editor, the AAO would be without sufficient evidence to conclude what is an average salary of an experienced editor in the field of news reporting, without the geographical limitations. Finally, evidence of the “average” wage in an occupation does not demonstrate what a high wage is in that occupation. Merely documenting wages above the average wage in the occupation is insufficient evidence under the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary in relation to others in the field.

Accordingly, the AAO concludes that the petitioner has not presented evidence that she commanded a high salary or other significantly high remuneration for services, in relation to others in the field of news reporting. *See* 8 C.F.R. § 204.5(h)(3)(ix).

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

When counsel initially filed the visa petitioner, he did not explicitly assert that the petitioner meets this criterion. In response to the director’s Request for Evidence, however, counsel asserted that the petitioner meets this criterion based on the number of articles that the petitioner had published and

the price of a photo or video that the petitioner had produced. The director disagreed in her August 11, 2010 decision.

On appeal, counsel again advanced his position that the petitioner meets this criterion, claiming that “[she] has achieved commercial success in her field.” Counsel supported his assertions with a number of reference letters that praise the petitioner’s business model and ideas, and her ability to select newsworthy materials. Counsel’s position, however, is inconsistent with the plain language of the criterion, which specifies that the commercial success must be “in the performing arts, as showing by box office receipts or record, cassette, compact disk, or video sales.” Counsel has not provided any evidence that the petitioner is involved in the performing arts or any legal bases to support a claim that the petitioner’s work in the news reporting field constitutes performing arts. Counsel has also not provided any evidence in the forms of box office receipts or record, cassette, compact disk, or video sales to demonstrate the petitioner’s commercial success in the performing arts. The evidence required by the regulation makes clear that commercial success is documented by sales data rather than general claims of success or profits. Finally, the profits of newspapers that contain the petitioner’s articles do not equate the commercial success of the petitioner’s articles, because they are but a part of the newspapers’ publications. In short, the AAO is without sufficient evidence to conclude that profits of the newspapers can be considered as evidence of the commercial success of the petitioner’s articles.

Accordingly, although counsel might have provided evidence that the petitioner has achieved some success in the field of news reporting, he has presented no evidence of the petitioner’s commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. *See* 8 C.F.R. § 204.5(h)(3)(x).

#### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

### III. CONCLUSION

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.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) 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,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top

of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

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<sup>6</sup> The AAO maintains *de novo* review of all questions of fact and law. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).