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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

[redacted]

DATE: JUL 0 6 2012

OFFICE: TEXAS SERVICE CENTER

FILE: [redacted]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (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 claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Moreover, at the initial filing of the petition or in response to the director's notice of intent to deny pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel claimed the petitioner's eligibility for all ten of the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) through (x). In the director's decision, he determined that the petitioner only met the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, counsel only contested the director's decision regarding the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the leading or critical role pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The AAO, therefore, considers the uncontested criteria on appeal to be abandoned. *See Sepulveda v. U.S. 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 court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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. *Id.*; 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 (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 evidence submitted to meet a given evidentiary criterion.[1] 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." *Id.* 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

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[1] 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 8 C.F.R. § 204.5(h)(3)(vi).

petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* 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 at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

III. TRANSLATIONS

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted non-certified English language translations, partial translations, and foreign language documents without any English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

> (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO notes that although at the time of the original filing of the petition the petitioner submitted a single certified translation, it is unclear which documents, if any, to which the certification pertains. For example, the translator indicated that the certification covered "Letters of recognition," "Letters of recommendation," "Awards received," and "Interviews in News [sic] papers, Magazines." The translator failed to identify which documents, if any, were specifically translated by her. The submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). It is noted that the petitioner failed to submit any *certified* translations in response to the director's notice of intent to deny or on appeal. Because the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

IV. ANALYSIS

A. Evidentiary Criteria[2]

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

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[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

On appeal, counsel claims the petitioner's eligibility for this criterion based on her receipt of the Golden Mara de Venezuela (1992), the Dama de la Cancion Award by Hora Especial (1997), and the Musical Excellence Award by Leon Inversiones XXI (1998).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that her prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

Regarding the Golden Mara de Venezuela, the petitioner submitted a letter from [redacted] who stated that he:

> [C]ertifies that, International singer [the petitioner] recorded in 1992, at Melody Recording Studios, owned by me, a CD called "Especialmente Romantica" which received the International Award "The Golden Mara of Venezuela" for best Romantic Production of the year in 1992.

The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

> (i) The non-existence or other unavailability or required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

As indicated above, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Mr. [redacted] letter does not constitute primary evidence, as opposed to documentary evidence from the awarding entity, or even secondary evidence, of the petitioner's receipt of the Golden Mara de Venezuela. In addition, while the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides for the submission of affidavits when the

petitioner demonstrates that primary evidence or secondary evidence does not exist or cannot be obtained, which she did not, Mr. [redacted] letter is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signer, in signing the statement, certifies the truth of the statement, under penalty of perjury. 28 U.S.C. § 1746. Further, the plain language of the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires the submission of more than one affidavit in which the petitioner submitted only one letter.

The petitioner also submitted a screenshot from Mr. [redacted] website, [redacted] which claimed that the petitioner received the Golden Mara de Venezuela. However, the self-promotional claims on Mr. [redacted] website do not constitute primary evidence of the petitioner's receipt of the award pursuant to the regulation at 8 C.F.R. § 103.2(b)(2). Moreover, the petitioner submitted a copy of a DVD that counsel claimed was an interview from a television program entitled, "They Are Latins," along with an uncertified and summary translation of the interview that purportedly indicated that the petitioner "obtained the international award 'Mara de Oro' of Venezuela for best romantic record of the year." The petitioner failed to submit a full and certified translation of the interview as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, the self-proclaimed receipt of an award from a television interview is not primary evidence of the petitioner's receipt of the award. The documentary evidence submitted by the petitioner is insufficient to demonstrate her receipt of the Golden Mara de Venezuela and is insufficient to establish that it is a nationally or internationally recognized prize or award for excellence in the field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Regarding the Dama de la Cancion Award by Hora Especial and the Musical Excellence Award by Leon Inversiones XXI, the petitioner submitted uncertified English language translations of the documents. As the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims of her receipt of the awards. Moreover, the petitioner failed to submit any documentary evidence reflecting that the awards are nationally or internationally recognized for excellence in the field of endeavor.

On appeal, counsel claims that "the meaning and the significance of the awards are clearly established by the titles of the awards." The AAO is not persuaded by counsel's assertions. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor, and it is her burden to establish every element of this criterion. However, an award with "National," "International," or "Excellence" in the title does not automatically elevate the award to a nationally or internationally *recognized* award. In fact, it does not necessarily demonstrate that the awards are national or international in nature. Without documentary evidence reflecting the national or international recognition for excellence of the award, it is insufficient to conclude based on the name of the award

that the award is nationally or internationally recognized for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner failed to establish 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 determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3] Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." Based upon a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion.

The petitioner claimed eligibility for this criterion based entirely on foreign language documents that were not accompanied by full and certified English language translations. Again, as the petitioner failed to comply with the regulation at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii), the AAO cannot determine whether the evidence supports the petitioner's claims. Moreover, the uncertified translations failed to include the authors of the majority of the material, as well as the title and date for others, as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Finally, the petitioner failed to submit any documentary evidence establishing that the material was published in professional or major trade publications or other major media. Simply submitting documentary evidence of published material is insufficient to meet this criterion unless the petitioner demonstrates that the material was published in professional or major trade publications or other major media pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The AAO notes that several of the purported translations asserted that the publications were "major." For example, for the articles entitled, "Tribute to the Maestro," and "Specially Romantic," the translator asserted that the sources were "El Mundo, Mayor [sic] Dayly [sic] Evening Newspaper" and "El Diario De Caracas, Mayor [sic] News Paper [sic]." As required in the regulation at 8 C.F.R. § 103.2(b), the translator must certify that the translation is "complete and accurate." The translator's personal assertions are not reflective of "complete and accurate"

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[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

translations of the documents. Moreover, even if the translations were certified, which they clearly are not, the numerous spelling errors throughout the translations question the competency and credibility of the translator.

Although the petitioner submitted numerous documents for this criterion, none of the documentary evidence complies with the regulation at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii). The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). Therefore, the petitioner failed to establish that she has had published material about her in professional or major trade publications or other major media consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). As such, the AAO withdraws the decision of the director for this criterion.

Accordingly, the petitioner failed to establish 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.*

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." On appeal, counsel claims:

> The Petitioner offers as evidence documentation requesting her to serve as a judge for the 2009 Premio Estrella Music Awards which took place in November 2009 in Miami, Florida. . . . Additionally, the Petitioner has served as the judge of others in the field at the Foundation International Festival of Music of the Hatillo. [The petitioner] was invited to serve as a judge for this event on two occasions, in 1994 and 1995. . . . The Petitioner was also invited to serve as a qualifying judge for the Lation [sic] American Music Festival, sponsored by the Teresa Carreno Foundation.

Regarding the purported 2009 Premio Estrella Music Awards, eligibility must be established at the time of filing. The petition was filed on July 22, 2009. However, counsel claimed that the petitioner's judging at the event occurred in November 2009. Therefore, the AAO will not consider this claim as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regarding the petitioner's purported judging at the Foundation International Festival of Music of the Hatillo and the Latin American Music Festival, as well as the 2009 Premio Estrella Music Awards, the petitioner submitted foreign language documents without certified English language

translations pursuant to the regulation at 8 C.F.R. §§ 103.2(b)(3). As the translations are not certified, they fail to support counsel's claim that the petitioner has judged the work of others pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). It is noted that regarding the Latin American Music Festival, the plain language of this regulatory criterion specifically requires "the alien's participation . . . as the judge of the work of others"; the mere *invitation* to serve as a judge is insufficient without evidence of actually judging the work of others.

For the reasons discussed above, the petitioner failed to demonstrate that she has served as a judge of the work of others in the same or an allied field of specification for which classification is sought at the time of the filing of the petition consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner failed to establish 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.*

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, counsel claims the petitioner's eligibility for this criterion based on recommendation letters from [redacted] and [redacted] However, the translations accompanying the recommendation letters are not certified by the translator as required pursuant to the regulation at 8 C.F.R. § 103.2(b). Therefore, the AAO cannot determine whether the translations support the claims of the authors of the recommendation letters.

It is noted that while the recommendation letters praise the petitioner as a singer and make general assertions, such as "[the petitioner] is a singer of wide professional experience, whose vocal quality, histrionics performances, and fame, has made her well known nationwide as well as internationally [redacted]," none of them make any indication of any original contributions of major significance in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. In fact, in counsel's brief, he failed to identify a single original contribution that has been made by the petitioner, let alone an original contribution of major significance in the field. Instead, counsel briefly claims that the "letters confirm the Petitioner's national and international success as a recording artist and performing singer." Again, the letters briefly indicate the petitioner's talents, such as "the petitioner has shown an exceptional and disciplined behavior, consistent and very professional, in an outside of the scenarios ([redacted]) and "[the petitioner] has captivated with her voice and presence the public that admires her and appreciates her as an artist of quality [redacted]

[redacted]," without explaining how her talents can be considered original contributions of major significance in the field. Moreover, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions. Further, USCIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

On appeal, counsel claims:

> [T]he Petitioner provided evidence that [the petitioner] has a successful, award winning recording career in which she has performed in a leading or critical role for organizations or establishments. Specifically, [the petitioner] has appeared with other leading internationally recognized artists as a performer, presenter and judge in internationally recognized awards ceremonies of distinguished reputations . . . and she was the lead performer on her Billboard topping hits . . . and she was the focus of a television program on a major Venezuela television station with a distinguished reputation which serves an international market.

Counsel refers to documentation that has already been discussed under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) and the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The AAO will not presume that evidence relating to or even meeting the awards criterion and the judging criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Moreover, the documentary evidence referenced by counsel, as already discussed, was submitted without certified English language translations as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). In fact, the television interview referenced by counsel was a purported *summary* translation of the interview and was not a "full" and "complete and accurate" translation.

It is noted that the AAO is not persuaded that sporadic, occasional, or one-time participation at an event is reflective of leading or critical roles for organizations or establishments as a whole. While the petitioner submitted self-promotional evidence regarding the judging competitions, the petitioner failed to submit certified translations of the documents and failed to submit any independent, objective evidence demonstrating that the organizations or establishments have a distinguished reputation. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Similarly, counsel failed to establish how being interviewed one time for a television program on the station "Televen" demonstrates a leading or critical role to the television station as a whole. Moreover, no documentary evidence was submitted to show that "Televen" has a distinguished reputation.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." On appeal, counsel claims:

> The Petitioner regularly receives income from performances, appearances and royalties from her twenty plus year career as an internationally acclaimed artist. . . . [T]he Petitioner earned over $70,000 in royalties and personal appearances *alone* [emphasis in original] in 2008, not including performances and revenue from concerts. Of equal importance here is that this figure only represents a portion of the Petitioner's net annual income. As an independent artist, [the petitioner] also enjoys the revenue received from production, sales and distribution of her work. . . . [T]he Occupational Information Network (O*NET) reports that the 2009 prevailing wage (gross income) for the most [emphasis in original] experienced singers in Miami, Florida (where the petitioner is located) is $59,093 annually.

A review of the record of proceeding reflects that the petitioner submitted several foreign language documents without any translations, as well as documentary evidence without any certified translations. As the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, the record of proceeding reflects that the petitioner submitted the following documentation:

1. A letter from [redacted] C.A. who indicated that the "record company has paid the artist and singer [the petitioner] a total amount of 10.000 BsF in royalties. for the selling of her CD record 'Travesuras'";

2. A letter from [redacted] who stated that the petitioner "received total earnings for the amount of 120.000 BsF during the year 2008" based on different shows, performances and presentations; and

3. Two royalty checks from SACVEN in the amount of 2.670.66. BsF

It is noted that the petitioner submitted a screenshot from www.xe.com reflecting that the exchange rate for the total of 132,670.66 BsF equates to $61,717.28. Although the petitioner submitted primary evidence regarding item 3, the petitioner failed to submit primary evidence of the royalties from "Travesuras" and earnings from shows, performances, and presentations regarding items 1 and 2. In fact, Ms. [redacted] letter failed to provide specific information reflecting how much the petitioner earned from each engagement and failed to identify the shows, performances, and presentations.

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or *other significantly high remuneration for services*, in relation to others in the field [emphasis added]." Based on the documentation submitted by the petitioner, she does not command a salary; rather the petitioner is compensated by the remuneration of her services, such as royalties from the sales of her work and her appearances at various engagements. Therefore, the petitioner must establish that she earns "other significantly high remuneration for services, in relation to others in the field" rather than commanding a high salary. However, the petitioner failed to submit any documentary evidence demonstrating that the remuneration for her services is significantly high in relation to other singers.

It is noted that counsel submitted on appeal a screenshot from [redacted] reflecting the Level 1 – 4 Wages for musicians and singers in the Miami, Florida and surrounding area. However, the screenshot does not reflect the remuneration for services of singers, so as to demonstrate that the petitioner's remuneration is significantly high. Even if the Level 1 – 4 Wages included the remuneration for services of singers, which it does not, the screenshot indicates median regional wage statistics and does not establish that a salary is high in relation to other singers as a whole and not limited to the Miami and surrounding areas.

The evidence submitted by the petitioner does not establish that she has commanded a high salary or other significantly high remuneration for services in relation to experienced professionals in her occupation. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." The petitioner's submission of documentary evidence simply reflecting that she has been remunerated for her services is insufficient to meet the plain language of the regulation without documentary evidence comparing her remuneration to others in the field, so as to establish that the petitioner has commanded significantly high remuneration for services.

Accordingly, the petitioner failed to establish that she meets this criterion.

B. Summary

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

V. 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.

Even if the petitioner had 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[ir] 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.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* 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.

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[4] 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* section 103(a)(1) of the Act; section 204(b) of the Act; 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).

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.