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

U.S. Citizenship and Immigration Services

B3

[redacted]

FILE: LIN 05 007 52609 Office: NEBRASKA SERVICE CENTER Date: JUN 27 2006

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, 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. Specifically, the director found that the petitioner had not established that he meets any of the regulatory criteria, of which an alien must meet at least three.

On appeal, counsel asserts that the director applied too high a standard (international acclaim) and mischaracterized the nature of the petitioner's field. As will be discussed in more detail below, nothing in the director's decision implies that she applied the wrong standard. We also do not find that the director's occasional characterization of the petitioner's field as including research warrants reversing the director's decision. Ultimately, counsel's appellate brief is not responsive to the director's legitimate and clearly expressed concerns, including the absence of the required initial evidence (such as awards and translations for the published materials). Rather, counsel offers rebuttals to straw-men arguments that were never advanced by the director.

For the reasons discussed below, we find that the petitioner, a surgeon, has authored scholarly articles and, although never claimed by counsel, has served in leading or critical roles for organizations with a distinguished reputation. As will be explained in detail below, the petitioner falls far short of meeting a third criterion as the petitioner has declined to submit the initial required evidence for those criteria despite being repeatedly placed on notice of the regulatory requirements: from the regulations themselves, the director's request for additional evidence and the director's final decision.[1]

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,

[1] Given that the petitioner has been placed on notice of these evidentiary requirements, should the absent documents exist, they would need to support a new petition. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a reconstructive plastic surgeon. 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 criteria follow.

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

Counsel initially asserted that the petitioner received awards in Korea, including the "Scientific Prize of the Year for 3 years in the field of surgery." The petitioner lists the three awards on his curriculum vitae, two of which are from the Korean Society of Plastic and Reconstructive Surgeons and one of which is from the Korean Burn Society. The petitioner also lists an Exemplary Duty Award from Hangang Sacred Heart Hospital, the petitioner's employer, and three certificates of appreciation. Dr. [redacted], a professor at the University of Washington School of Medicine, and Dr. [redacted], Director of the University of Washington Burn Center, also attest to the petitioner's three Scientific Prize of the Year awards. Dr. [redacted] Dr. explains how they have first hand knowledge of these awards. The petitioner submitted two certificates of appreciation for participating in conferences.

In response to the director's request for additional evidence, the petitioner submitted a March 11, 2005 letter from the International Biographical Centre (IBC) announcing the petitioner's "nomination as an International Health Professional of the Year for 2005." The "about us" materials submitted reflect that IBC has published more than 1,000,000 biographies in more than 200 editions. The petitioner also submitted evidence of his consideration for publication in Who's Who in the World 2003. While the petitioner submitted a list of the papers awarded the Scientific Prize of the Year, he did not submit the prizes themselves. A review of the articles themselves, submitted initially, reveals no reference to an

award. Finally, the petitioner submitted evidence of the petitioner's inclusion in a book listing the top 450 doctors in Korea.

The director concluded that the petitioner had not established his receipt of the three Scientific Prize of the Year awards, as they were not part of the record. The director also determined that the petitioner had not demonstrated that the awards were "nationally or internationally" recognized prizes. The director then listed several reasons why the nomination from IBC was insufficient. First, it was a nomination, not an award. Second, the record lacked evidence as to its significance. Third, the nomination is dated several months after the petition was filed and, thus, cannot establish eligibility as of that date. Finally, the director concluded that inclusion in a biographic dictionary is not an award or prize.

On appeal, counsel fails to acknowledge the absence of the Scientific Prize of the Year awards. Instead, counsel notes the letter from Dr. Isik and cites *Buletini v. INS*, 860 F. Supp. 1222, 1231 (E. D. Mich. 1994) for the proposition that foreign awards need not have significance outside the country of origin. Counsel's discussion appears to refute conclusions the director never made and fails to address the conclusions the director did reach.

First, we concur with the director that the record lacks the primary initial required evidence for this criterion, the awards themselves. The petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not documented that the awards themselves do not exist or are unavailable. The petitioner and counsel were on notice of this requirement from the regulation itself and had an opportunity to provide this evidence initially, in response to the director's request for additional evidence and on appeal. Nevertheless, the petitioner has not provided this evidence.

Second, the director never implied that an award must be internationally recognized. The director specifically stated that the petitioner had not demonstrated that the awards were nationally *or* internationally recognized. Regarding the statement by Dr. [redacted] it is significant that he is a professor at a U.S. university. Dr. [redacted] does not claim to represent either Korean society that allegedly issued awards to the petitioner. Nor does he claim to be an expert on Korean awards. Thus, he does not explain how he has first hand knowledge that the petitioner won the awards or their significance in Korea.

Counsel also continues to assert that the IBC "award" serves to meet this criterion. Counsel states that he is attaching a copy of the award, "not as evidence of the award but to show that the nomination was based on [the petitioner's] past accomplishments and indicative of the international prestige that he has garnered." Counsel then provides a Westlaw citation for an unpublished, non-precedent decision by this office that we have been unable to locate on Westlaw under the citation provided. Regardless, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Once again, counsel fails to address the director's main concerns. First, counsel does not refute the director's conclusion that the "award," for which the petitioner was "nominated" after the date of filing, cannot serve as eligibility as of the date of filing. We concur with the director that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider the IBC "award."

Moreover, we concur with the director that the petitioner has not established the significance of the IBC "award." Counsel provides no explanation for how a copy of the "award" itself (not submitted as evidence of the "award," but of its significance according to counsel) can serve as evidence of its significance. The certificate does not indicate how many other health professionals received nominations or explain the selection process. The record lacks national media coverage of the selections for this "award" as would be expected of a nationally recognized award. The initial letter reflects that IBC is a biographic reference book company that has published over 1 million biographies. Thus, it appears that IBC is actually a vanity press that issues "awards" to those professionals it seeks to include in its biographical dictionary. Such vanity presses often market "awards" issued for a fee. True awards are not contingent upon payment of a fee. As stated by the director regarding the invitation to include the petitioner in Who's Who, inclusion in a biographical dictionary is not an award or prize. We concur with the director's analysis, unrefuted on appeal.

Finally, the record lacks evidence that selection for a book of the 450 best doctors in Korea constitutes an award or prize.

For the reasons discussed above, the petitioner has not established that he 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's curriculum vitae lists several memberships. We will not accept the petitioner's self-serving curriculum vitae as primary evidence. The primary evidence of a membership is a membership card or confirmation from the association of which the alien is a member. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not established that his membership confirmations do not exist or are not available. As such, we will only consider those memberships documented in the record.

The petitioner is a member of the International Society for Burn Injuries (ISBI), the Korean Association of Tissue Banks (KATB), the Korean Society of Reconstructive Hand Surgery (KSRHS), and the Korean Cleft Palate-Craniofacial Association. We presume from the petitioner's role as a director for the Korean Society of Plastic Surgery (KSPS) and the Korean Burn Society (KBS)[2] that he is also a

[2] This evidence will also be discussed below as it more appropriately relates to the criterion set forth at 8 C.F.R.

member of these societies. We also presume the petitioner's membership in the Korean Society of Plastic Reconstructive Surgeons (KSPRS) from the petitioner's chairmanship of the society's Information and Communication Committee. The petitioner claims to have been a member of the International Confederation for Plastic Reconstructive and Aesthetic Surgery (IPRAS) since 1993, but only submits evidence of his membership since 2005, after the date of filing. In response to the director's request for additional evidence, the petitioner submitted materials regarding several associations, none of which address membership criteria.

The materials for ISBI include a message from the president urging those interested in becoming involved to join. The president references membership dues, but no exclusive criteria. The materials for KSPRS indicate that it is a "huge organization." The materials do not discuss any exclusive membership criteria.

The director noted that the petitioner had not documented all of his claimed memberships and that the petitioner had not documented membership in IPRAS as of the date of filing. The director stated that the overall prestige of an association was not decisive; at issue are the membership requirements. The director concluded that the record lacked evidence of exclusive membership criteria. Finally, the director concluded that the petitioner's licensure in his field was a requirement to practice medicine as a plastic surgeon and could not serve as evidence to meet this criterion.

On appeal, counsel continues to rely on the petitioner's self-serving curriculum vitae as evidence. As stated above, the petitioner's own assertions do not constitute primary evidence of membership. *See* 8 C.F.R. § 103.2(b)(2); *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel also once again mischaracterizes the director's concerns, asserting, without basis, that the director rejected the petitioner's Korean memberships because they were national and not international. Counsel then asserts that the petitioner provided evidence of the membership criteria for ISBI, the Asia Pacific Burn Association and the KBS. Of these associations, the only one in which the petitioner has documented membership is ISBI and KBS.

Counsel asserts that ISBI membership "is based upon professional status and based upon nomination by others in the field." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Contrary to counsel's assertion on appeal, the petitioner did not submit the official membership requirements for ISBI. Rather, the petitioner submitted general materials about ISBI that make no mention of a nomination process for membership and imply any professional with an interest should join. Even if we accept counsel's unsupported assertions, professional status and sponsorship by current members are not outstanding achievements. The record lacks evidence that ISBI requires outstanding achievements of all its members.

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§ 204.5(h)(3)(viii).

In light of the above, the petitioner has not established that he meets this criterion. We acknowledge that the petitioner has served in director positions for some of these associations. That evidence will be considered below as it relates to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), a criterion counsel has never even claimed the petitioner meets.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Initially, the petitioner submitted copies of foreign language newspaper articles with no accompanying translation. The petitioner also submitted DVDs of the petitioner's television appearances. Counsel asserted that translations were not being submitted because the evidence was being submitted, "to show the national prominence of [the petitioner] in Korea and not as evidence of scholarly work." This statement is unexplained given that the regulation relating to authorship of scholarly articles, 8 C.F.R. § 204.5(h)(3)(vi) does not specifically require translations while the regulation relating to this criterion, 8 C.F.R. § 204.5(h)(3)(iii), does. The director's request for additional evidence noted that evidence submitted to meet this criterion must be accompanied by any necessary translation. In response, counsel asserted that evidence was previously submitted to meet this criterion and that the petitioner was featured in *Cho Sun Ilbo*. Counsel asserts that this publication is the largest daily newspaper in Korea and submits evidence in support of that assertion.

The director concluded that the petitioner had not submitted the required translations. Thus, the petitioner could not establish that the materials are about him and that they appeared in major media. On appeal, counsel continues to assert that *Cho Sun Ilbo* is major media, a fact not contested by the director. Counsel further asserts that the director erred in failing to consider the DVD.

Once again, counsel ignores the director's main concern, that the record lacks translations of the published materials. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the submission "of any necessary translation." The regulation at 8 C.F.R. § 103.2(b)(3) provides: "*Any* document containing foreign language submitted to the Service [now Citizenship and Immigration Services] *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." (Emphasis added.)

The petitioner was on notice of the requirements for certified translations from the regulations, the director's request for additional evidence and the director's final decision. Yet the petitioner has never provided any translations for the published materials. Counsel provides no explanation for this failure on appeal.

The lack of translations, as explained by the director, is not simply a technical failure immaterial to the petitioner's eligibility. The regulation requires both that the materials be "about" the alien and that they appear in major media. Without certified translations, including a certified translated transcript of the

DVD materials, we cannot determine the subject of the published materials submitted. Second, only some of the published materials include the name of the publication in Roman letters. None of those papers are *Cho Sun Ilbo*. Thus, without certified translations including a translation of the name of the publication, counsel's assertion that the petitioner was featured in that publication remains unsupported by the record. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534; *Matter of Laureano,* 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. As such, while the director did not contest that *Cho Sun Ilbo* is major media, and we find that it is, the record lacks evidence that the petitioner was featured in that publication. Finally, counsel's assertion that the DVD contains evidence of the petitioner's appearance on major networks in Korea is also unsupported. Without translated transcripts, including the names of the shows, and evidence that these shows are nationally broadcast in Korea, the petitioner cannot demonstrate that these appearances can serve to meet this criterion.

In light of the above, the petitioner has not complied with the regulations at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) by submitting the necessary translations despite being placed on notice of this requirement three times (by the regulations, the request for additional evidence and the director's final decision). Thus, the petitioner has not met his burden of proof for demonstrating that he 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.

Initially, counsel asserted that the petitioner met this criterion because:

> [The petitioner] has chaired and participated in numerous professional seminars and lectures and has judged the works of others in the field including at the Asia Pacific Burn Congress in Australia [and] has had abstracts accepted at [the] John A. Boswick Wound and Burn Symposium.

The petitioner submitted evidence of several presentations and an invitation to chair a session at the 2003 Asia Pacific Burns Congress. Counsel reiterates his initial claim in response to the director's request for additional evidence. At that time, the petitioner submitted evidence of his lectures at various conferences and for a class at the Chinese University of Hong Kong in 2005, after the date of filing. Under a separate exhibit, the petitioner also submitted evidence of his appointment as a professor at the College of Medicine Hallym University since 1989. Prior to appeal, counsel never asserted that the petitioner's responsibilities as a professor served to meet this criterion.

The director concluded that seminar participation, lecturing and submitting abstracts are "not activities which generally involve the judging of others" and that the petitioner had not provided evidence that his participation involved the judging of others. On appeal, counsel asserts for the first time that the petitioner's duties as a professor, including teaching, grading and evaluating students, serve to meet this criterion. Counsel continues:

> The Director takes an undue and unreasonable construction of the words in the regulations "judge the work others." The Director acknowledges that [the petitioner] individually and as a panel member participated in seminars and gave lectures and submitted abstracts. His participation in such seminars as a chair, giving lectures, and submitting abstracts are commentary on the current state of research. Through such participate [sic] he sometimes concurs with or disparages findings and research by others. Participation in professional seminars necessarily involves critiquing research or findings of others in the field. For example, when he submits his abstract, it cites previous research of others and whether his findings are complimentary or are distinguishable from the works of others or at odds with the findings of previous research.

Counsel is not persuasive. First, we cannot conclude that the director erred in failing to consider the petitioner's duties as a professor since counsel only asserts that these duties relate to this criterion on appeal. Regardless, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. Thus, merely demonstrating that the alien's occupation is one where evaluating the work of others is inherent to the occupation is insufficient. More specifically, every teacher, instructor, lecturer or professor evaluates his students; every coach evaluates his athletes and every first line supervisor evaluates his subordinates. Not every teacher, instructor, lecturer, professor, coach or first line supervisor enjoys national or international acclaim. Thus, the inherent duties of grading one's students cannot serve to meet this criterion, as it does not set the petitioner apart from any other professor in Korea.

The regulations include a criterion for scholarly articles, 8 C.F.R. § 204.5(h)(3)(vi). Judging the work of others is a separate criterion, 8 C.F.R. § 204.5(h)(3)(iv). As such, we cannot agree with counsel that the type of scholarly analysis involved in writing a scholarly article, including the citation of other work, can serve to meet this separate criterion. Presenting one's work at a seminar or conference is comparable to authoring a scholarly article. Its primary purpose is to present one's own work, not to judge the work of others, which if it occurs, is incidental. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534; *Matter of Laureano,* 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. Thus, counsel's assertions as to the petitioner's duties as chair of a session cannot be considered if unsupported. The record lacks evidence that the petitioner served individually or on a panel *for the purpose of judging the work of others*, such as serving on an awards committee or as the editor of a journal.

In light of the above, the petitioner has not established that he meets this criterion. His presentations will be considered below as they relate to the scholarly articles criterion.

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

Counsel did not initially claim that the petitioner meets this criterion. The director's request for additional evidence advised that any claim to meet this criterion must be supported by evidence that "those outside the alien's circle of colleagues and acquaintances consider the work important [or] especially valuable." Once again, counsel did not address this criterion in response. The director concluded that the petitioner did not claim to meet this criterion.

On appeal, counsel states:

> The Director simply concludes that no evidence was submitted to show the alien's original scientific or scholarly contribution of major significance. It is submitted that this requirement has also been met. In Dr. [redacted]'s recommendation letter, he states, "[the petitioner] has helped pioneer the use of Integra, or artificial skin in burn reconstruction procedures and techniques for treatment of scar tissues due to burns and industrial accidents."

We cannot fault the director for failing to consider this criterion as counsel raises this claim for the first time on appeal. The petitioner worked in Dr. [redacted] laboratory as a visiting professor from 1996 to 1998. Dr. Isik coauthored articles with the petitioner. We also acknowledge a letter from Dr. [redacted], Director of the University of Washington's Burn Center, who coauthored articles with the petitioner. As such, Dr. [redacted] and Dr. [redacted] are not independent witnesses. The record does not include letters from independent surgeons confirming their adoption of the petitioner's techniques or evidence that the petitioner's articles have been widely and frequently cited, as would be expected of a published technique constituting a contribution of major significance. As the petitioner did not submit translations of the news articles purportedly about the petitioner, we cannot determine whether those articles confirm the impact of the petitioner's techniques.

In light of the above, the petitioner has not established that he meets this criterion, claimed for the first time on appeal.

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

The petitioner submitted evidence of his authorship of 46 articles and the presentations discussed above. The petitioner claims to have authored portions of two books, but fails to submit copies of the table of contents listing the petitioner as an author. 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 director noted that publication is expected of researchers and concluded that the petitioner had not demonstrated the impact of his articles. On appeal, counsel notes that the petitioner is a surgeon, not a researcher or general scientist. Counsel claims that the petitioner has authored chapters of nursing texts. As stated above, while the petitioner's articles and presentations are part of the record, copies of relevant pages from the books are not. Thus, we will not consider the books.

We agree with counsel that publication is not inherent to the field of surgery in the same way as it is for researchers. That said, the petitioner has not established that publishing case studies is unique to those surgeons with national or international acclaim. As such, evidence that the petitioner has been cited to at least some degree by independent authors would bolster the petitioner's case. Nevertheless, we are persuaded that the petitioner meets this criterion.

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

Counsel does not challenge the director's conclusion that this criterion does not relate to the petitioner's field and we agree with the director.

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

The petitioner submits letters of commission appointing him Director of the Korean Cleft Palate-Craniofacial Association, Director Without Portfolio of the Korean Society of Plastic Surgery and Academic Director of the Korean Burn Society. The petitioner also submitted evidence that he was appointed as a head professor at Hallym University's College of Medicine and Chief of the Department of Plastic and Reconstructive Surgery at Hangang Sacred Heart Hospital, the university's medical center.

Despite the submission of this evidence, counsel has never claimed that the petitioner meets this criterion, including on appeal. Thus, the director did not address this criterion at length.

Although counsel has never asserted that the petitioner meets this criterion, the record establishes that the petitioner has played a leading role for national professional associations and the only hospital in the Asia Pacific Region specializing in burn care. As such, while the director can hardly be faulted for not considering a claim never advanced by counsel, we are persuaded that the petitioner 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 petitioner initially submitted his income tax returns reflecting income of 98,996,620 Won between May 2003 and April 2004 and a consulting contract but no evidence of comparable salaries in the field. The director requested the equivalent of these wages in U.S. dollars and evidence that the wages were high in comparison with others in the field. In response, counsel asserts that the petitioner already submitted evidence of his high income and references the consulting contract. The contract provides for "reasonable travel expenses," defined later as "coach class equivalent fare."

The director concluded that the petitioner had not established how his wages compared with others in the field. On appeal, the petitioner asserts that the Korean government does not maintain wage statistics. The petitioner submitted a news article reporting that doctors earned on average only 4.71 million Won. Demonstrating that a surgeon earns more than the average earned by all doctors regardless of practice is not persuasive. The petitioner has not demonstrated that his wages are comparable with the highest paid plastic surgeons.

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

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

Counsel does not challenge the director's conclusion that this criterion is not applicable to the petitioner's field and we concur with the director.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.