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**U.S. Citizenship
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Services**

B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 24 2008
SRC 06 007 51053

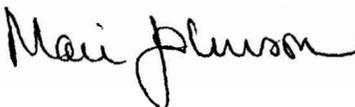
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which remanded the matter to the director for further action and consideration. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On certification, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted other comparable evidence of his extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on October 11, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a drummer of Filipino jazz music. The statute and regulations require the petitioner's national or international acclaim as a musician to be sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). According to the petitioner's Form I-140, Immigrant Petition for Alien Worker, and his Form I-485, Application to Register Permanent Residence or Adjust Status, his "Date of Last Arrival" in the United States was July 29, 1999. Although the petitioner has been residing in the United States since 1999, there is no evidence establishing that he has sustained national acclaim as a jazz drummer in this country. Further, there is no evidence showing that the petitioner's acclaim in the Philippines was sustained during the decade preceding the filing of this petition.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.¹

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

The petitioner submitted a July 19, 2005 letter from [REDACTED], Vice-President and Chairman, Asosasyon Ng Musikong Pilipino Foundation, Inc. (AMP), stating that the petitioner is "a bona fide member of the AMP in good standing." Mr. [REDACTED] letter does not provide information regarding the AMP's specific requirements for admission to membership. The petitioner also submitted a May 29, 2005 letter from [REDACTED], a bass player and member of the Filipino jazz group Affinity, stating: "In order to be a member of Asosasyon Ng Musikong Pilipino Foundation, Inc., a person is required to have sustained outstanding achievements in the musical field, as judged by recognized national experts in the musical field." There is no evidence showing that [REDACTED] is an official representative of the AMP. As such, it is not apparent how [REDACTED] is qualified to provide information regarding the AMP's membership requirements. There is no evidence (such as membership bylaws or official admission requirements) showing that the AMP requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

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

¹ The petitioner does not claim to meet or submit evidence relating to the criteria 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.

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. An alien would not earn acclaim at the national or international level from a local publication. 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.²

The petitioner submitted a February 6, 2003 internet article posted at <http://www.philmusic.com> entitled "Adobo Jazz is Now Cooking." The article discusses [REDACTED]'s launch of an independent music album project entitled "Adobo Jazz, Volume 1" and only mentions the petitioner's name in passing. The petitioner also submitted a July 17, 2004 internet article posted at <http://www.houstonculture.org> entitled "Pinoy Rock Legends Rock Houston." The article discusses a dual concert given by guitarist [REDACTED] and the pop music group Hotdog. Briefly mentioning the petitioner only once, the article states: "Backed by a trio of local players that included expatriated former Manila session-drummer [the petitioner], Mike took us on a ride down the streets of Pinoy rock history, streets he once ruled as he worked to define the genre in the 1970s...." Neither of the preceding articles is primarily about the petitioner. The plain language of this regulatory criterion, however, requires that the published material be "about the alien." Further, there is no evidence showing that the internet sites which posted the preceding articles qualify as major media.

The petitioner submitted a document posted on the internet at <http://www.geocities.com> entitled "Manila's Pool of Session Musicians." The document lists the petitioner's name along with eleven other entries under the heading "Some of the Philippines top musicians who are now residing or making their living elsewhere." According to the "Index of Exhibits" submitted by the petitioner, the preceding document was "from [REDACTED] website." The petitioner also submitted a December 6, 2004 letter of support from [REDACTED] identifying him as a "good friend of [the petitioner] for many years." The inclusion of the petitioner's entry in his friend's internet posting does not constitute published material about him in professional or major trade publications or some other form of major media. Nor is such an entry evidence of the petitioner's sustained national or international acclaim at the very top of his field.

On certification, the petitioner submitted an excerpt from a book entitled *Pinoy Jazz Traditions* which was published in 2004.³ Pages 198 through 203 of the book reflect the author's interview of John Lesaca, a jazz violinist, who the author refers to as "a formidable force in the contemporary development of Pinoy jazz." On page 201, Mr. [REDACTED] states that he released three albums and identifies the petitioner among nine of his

² 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.

³ The record includes supporting evidence showing that this book received favorable reviews, won the National Book Award for "Best Book on Music" from the Manila Critics Circle in 2004, and was later made into 59-minute video documentary about the development of jazz in the Philippines.

session musicians who he collectively describes as “outstanding jazz artists in their own right.” There is no evidence showing that the petitioner was singled out for discussion or further mentioned in *Pinoy Jazz Traditions*. The petitioner has not established that this book, or any significant portion of it, is about him.

The petitioner’s appellate submission included an article about him in the March 2006 issue of *Fil-Am Press* entitled “[The petitioner]: Versatile musician.” The petitioner also submitted a letter from the publisher and editor of *Fil-Am Press* stating: “*Fil-Am Press*, published monthly out of Houston, Texas, has a circulation of 10,000 copies and is distributed free to Filipino-American communities in the entire state of Texas.” The distribution information for this local publication tailored to the Filipino segment of the Texas population does not establish that it qualifies as a form of major media. In response to the director’s February 21, 2007 request for evidence, the petitioner submitted an April 18, 2007 article about him in the “Pinoy Abroad” section of the Greater Manila Area (GMA) News and Public Affairs website stating: “In 1999, [the petitioner] came to Houston to live with his sister and pursue his dream of making it in the United States. . . . He plays small venues in Houston and often travels to Reno, Nevada, for concerts. He hopes to move to Los Angeles in a year to reunite with his friend [REDACTED] and create jazz music.” There is no evidence showing that the “Pinoy Abroad” section of the GMA News and Public Affairs internet site has significant national or international readership. Nevertheless, the preceding articles were published subsequent to the petition’s filing date. **A petitioner, however, must establish eligibility at the time of filing.** 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these articles in this proceeding.

On certification, counsel argues that the director should have considered the album covers of Philippine jazz music that identify the petitioner’s name in the credits as a drummer. The petitioner submitted evidence showing that his name was included in the album credits for [REDACTED] (1993), [REDACTED] (1990), [REDACTED] (1985), and [REDACTED] (1989). The mere fact that the petitioner’s name appeared in the album credits on another musician’s record sleeve does not render the sleeve a publication about the petitioner. Further, we cannot ignore that the album covers submitted by the petitioner are limited to music released in the 1980s and early 1990s. The statute and regulations require the petitioner’s national or international acclaim as a jazz musician to be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). In this case, there is no evidence of musical recordings released by the petitioner under his own name or that of other jazz musicians in the twelve years preceding the petition’s filing date.

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

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

We acknowledge the petitioner’s submission of several reference letters praising his talent and notoriety as a drummer of Filipino jazz music. Talent and notoriety in one’s field, however, are not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

On certification, counsel argues that the director erred by failing to consider the January 2006 reference letters from [REDACTED] and [REDACTED] because they were written subsequent to the petition's filing date. In addressing these letters, the director cited *Matter of Katigbak*, 14 I&N Dec. at 45, 49, in which it was held that an alien must be qualified at the time the petition is filed. A petition may not be approved after the alien becomes eligible under a new set of facts. *Id.* at 49. The content of the letters from [REDACTED] and [REDACTED], however, does not indicate that they were discussing new facts, qualifications, or achievements that post-date the filing of the petition. As such, we agree with counsel that their letters can be considered.

[REDACTED], Executive Director, Sparacino Company Dancers, Houston, Texas, states:

As a drummer of Philippino jazz music, [the petitioner] keeps alive the rare and ancient traditions of the Philippino culture through both his musical performances and his teaching of jazz music. His cultural contributions are particularly appreciated by the Philippino community in Houston and South Texas.

[The petitioner's] expertise as a drummer of Philippino jazz music is an artistic contribution of major significance in the field. His skills are culturally unique and his talents showcase the cultural heritage and musical traditions of the Philippines. He is one of only a few people keeping this tradition of Philippino jazz music alive and kicking. His performances as a Philippino jazz drummer in numerous programs and shows in Houston, fulfills a cultural education need of the community and enhances the audiences' knowledge and appreciation for the Philippino jazz music culture.

[REDACTED] states that he is a professional drummer residing in Houston, Texas. He further states:

[The petitioner's] work as a drummer of Filipino jazz music will greatly benefit the U.S. economy as well as Filipino cultural organizations here, since he will have a vital role in helping keep the Filipino jazz music culture alive here in the U.S., through his musical performances and teachings of jazz music. His cultural contributions are particularly appreciated by the Filipino community in Houston and South Texas.

[The petitioner's] expertise as a drummer of Filipino jazz music is an artistic contribution of major significance in the field. His culturally unique skills and talents help foster and promote the cultural heritage and vast musical traditions of our native country, the Philippines. [The petitioner] is amongst the very few Filipino jazz artists here in the U.S. keeping the traditions of Filipino jazz music from fading into history. His culturally unique performance as a Filipino jazz drummer in numerous showcases and exhibits in the U.S. educates the cultural needs of the community and enhances the U.S. audiences' appreciation for the Filipino jazz music culture.

The preceding letters from [REDACTED] and [REDACTED] both state that the petitioner's "expertise as a drummer of Filipino jazz music is an artistic contribution of major significance in the field." We cannot conclude that the petitioner has made original artistic contributions of major significance in his field simply through having expertise as a drummer of Filipino jazz music. The preceding letters include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original artistic contributions of major significance in jazz music. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase

“major significance” is not superfluous and, thus, that it has some meaning. While the petitioner’s local U.S. performances have earned the admiration of “the Filipino community in Houston and South Texas,” there is nothing to demonstrate that his work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner’s influence on other drummers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of recommendation letters from the petitioner’s personal contacts is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. 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 that one would expect of a jazz musician who has sustained national or international acclaim at the very top of his field. Without extensive documentation showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

On certification, counsel argues that the petitioner’s reference letters, the listing of his name in the credits of albums released by other musicians, and the evidence of his “participation in the United States with renowned Philippine jazz musicians” meets this regulatory criterion. As stated by the director, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the occupation of musician to perform on stage or to make recordings of one’s work. Not every musical performance is an artistic exhibition or showcase indicative of national or international acclaim at the very top of the field. The reputation of the venues where the petitioner has played is relevant to the distinguished reputation of the musical group in which the petitioner plays and, thus, the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii). The ticket sales at these venues and the record sales for his albums are relevant to the petitioner’s commercial successes and, thus, the regulatory criterion set forth at 8 C.F.R. § 204.5(h)(3)(x). Such evidence is less persuasive as evidence to meet this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vii). Nevertheless, we will consider the petitioner’s evidence below.

The petitioner submitted evidence showing that his name was included in the album credits for [REDACTED] (1993), [REDACTED] (1990), [REDACTED] (1985), [REDACTED] (1989). The primary focus of these albums was the featured artists’ music rather than the petitioner’s music. For example, there is no evidence showing that the petitioner was offered a recording contract for his music in the same manner as the preceding musicians. The petitioner also submitted promotional pamphlets for an “Eddie K. & His Band” jazz concert at the Houston Community College’s Heinen Theater in 2000 and a “Mike Mediano & Friends” jazz concert in 2001 at the Manila Peninsula Restaurant in Orange, California. There is no evidence showing the significance of the preceding

venues or that the petitioner's music was the primary focus of the concerts. For example, there is no evidence indicating that the petitioner was the headlining musician in the same manner as [REDACTED] or [REDACTED]. The petitioner has not established that the evidence submitted for this regulatory criterion is indicative of sustained national or international acclaim at the very top of his field.

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

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

On certification, counsel argues that the petitioner performed in a leading or critical role by playing the drums on albums released by [REDACTED] and [REDACTED]. The petitioner submitted supporting evidence showing that [REDACTED] won an Awit Award in 1991 from the Philippine Association of the Record Industry and that [REDACTED] became a gold record. The petitioner also submitted a July 19, 2005 letter from [REDACTED] but his letter does not state that the petitioner performed for him in a leading or critical role. Further, the record does not include letters of support from [REDACTED] and [REDACTED] discussing the importance of the petitioner's role in their music. While the record contains evidence (including published material) showing that the preceding musicians had distinguished reputations in the Philippines, we cannot ignore that they played the primary role in their own musical success. We further note that they utilized other instrumentalists on their albums in addition to the petitioner. As there is no evidence demonstrating how the petitioner's role differentiated him from the featured musicians and their other participating instrumentalists, we cannot conclude the petitioner's role for [REDACTED] and [REDACTED] was "leading or critical." Finally, we note that the albums on which the petitioner performed were released in the 1980s and early 1990s. The statute and regulations require the petitioner's national or international acclaim as a jazz musician to be sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). In this case, there is no evidence showing that the petitioner has performed on an album in the twelve years preceding the petition's filing date. Thus, the petitioner has not established that he was responsible for the preceding musicians' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

The petitioner submitted evidence showing that his name was included in the album credits for [REDACTED] (1993), [REDACTED] (1990), [REDACTED] (1985), and [REDACTED] (1989). The petitioner also submitted promotional pamphlets, published material, and photographs showing that he performed in concerts headlined by other musicians. This regulatory criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitted evidence indicating that the petitioner participated in various concerts or musical recordings cannot meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained

national or international acclaim at the very top of his field. For example, there is no evidence showing that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. We acknowledge the petitioner's submission of evidence indicating that [REDACTED] became a gold record. However, there is no evidence showing that the success of [REDACTED] album was primarily attributable to the petitioner rather than to [REDACTED] himself. Nor is there evidence showing that the petitioner received a large percentage of royalties from [REDACTED]'s gold record. With regard to the remaining albums, there is no evidence showing that they generated substantial national or international sales or that their success was mostly attributable to the petitioner. Finally, there is no evidence showing that the petitioner has enjoyed commercial successes during the last decade. The statute and regulations require the petitioner's national or international acclaim as a jazz musician to be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Further, there is no evidence showing that the petitioner's national or international acclaim as a jazz drummer has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record includes no evidence of nationally or internationally acclaimed achievements and recognition subsequent to his arrival in the United States in 1999.

In a May 17, 2007 letter responding to the director's request for evidence, counsel argues that the reference letters, the album credits identifying the petitioner, and the information from [REDACTED]'s website are **comparable evidence of the petitioner's extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4)**. This evidence has already been addressed under the regulatory criteria 8 C.F.R. § 204.5(h)(3). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. While recommendation letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires **"extensive documentation" of sustained national or international acclaim**. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's personal contacts.

Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at the national or international level. 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.

ORDER: The director’s decision of July 23, 2008 is affirmed. The petition is denied.