

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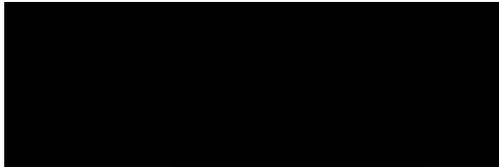
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: SEP 18 2008

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.

Mai 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established that the beneficiary enjoys the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence. Counsel’s assertions are not persuasive or supported by law, regulation or precedent and the evidence submitted on appeal only addresses some of the director’s valid concerns based on the record before him. We will address the individual criteria for this classification below, upholding all of the director’s conclusions. Overall, while the beneficiary clearly had a career as an actor in Mexico and is currently sought as a speaker at political events, the evidence submitted to meet the various criteria (except the published material from 2003 and earlier) all relates to a single movie produced by and starring the beneficiary. Absent a one-time achievement on the scale of a Nobel Prize, the beneficiary must qualify based on “a *career* of acclaimed work in the field.” H.R. Rep. No. 101-723, 59 (Sept. 19, 1990) (emphasis added). The record does not demonstrate a career of acclaimed work.

At the outset, we must address some of the broad issues before examining the evidence as it relates to the regulatory criteria. First, the record indicates that the beneficiary seeks to enter the United States to continue work as an actor and producer. We concur with the director that the beneficiary’s political activism, including attendance at a White House event, has no relevance to the petition before us, which seeks to classify the beneficiary as an alien of extraordinary ability in film. While many famous actors and producers choose to engage as activists, not all actors involved in social causes have sustained acclaim. In other words, activism alone is not evidence that the actor or producer is nationally or internationally acclaimed as an actor or producer.

Second, we find that counsel provides no legal authority in support of his request that the AAO “take administrative notice” of two of counsel’s assertions.¹ On the contrary, it is the petitioner’s burden to establish every element of a given eligibility criterion. Section 291 of the Act, 8 U.S.C. § 1361. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998); *Matter*

¹ As will be explained below, counsel requests that the AAO take “administrative notice” that all of the publications covering the beneficiary have a national circulation and that the Smithsonian is a distinguished institution. As will be elaborated below, there are multiple problems with the published materials submitted that prevent them from meeting the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the reputation of the Smithsonian as a whole does not necessarily demonstrate the significance of the “emerging talent” award the institution issued to the beneficiary as part of an event to recognize the influence of Mexico on the United States.

of Ho, 22 I&N Dec. 206, 211 (both citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). In addition, 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).

Third, we reject counsel's assertion that the director should have considered evidence that postdates the petition's filing date. The regulation at 8 C.F.R. § 103.2(b)(1) provides: "An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition." The regulation at 8 C.F.R. § 103.2(b)(12) provides: "An application or petition shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the application or petition was filed." *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Commr. 1971), states: "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts." The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Regl. Commr. 1977) and *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Regl. Commr. 1977) (relating to an employer's ability to pay the proffered wage). *Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998) extends this principle to employment creation aliens. *Matter of Izummi* cites *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), the decision on which the director relied, for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

On appeal, counsel notes that in *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Commr. 1994), the AAO acknowledged the alien's golf victories after the date of filing. The language quoted by counsel, however, appears in a footnote to the conclusion that the alien was a golfer of extraordinary ability based on evidence of achievements prior to the date of filing. *Matter of Price* does not overrule the above precedents or the clear plain language in the regulations at 8 C.F.R. §§ 103.2(b)(1), (12).

Finally, on appeal the petitioner submits letters affirming the beneficiary's eligibility for a nonimmigrant visa in a similar classification defined at section 101(a)(15)(O) of the Act, 8 U.S.C. § 1101(a)(15)(O). We note that 8 C.F.R. § 214.2(o) includes aliens who have a demonstrated a record of extraordinary achievement in the motion picture or television industry. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary achievement as "a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television industry." The regulatory criteria for meeting this definition are set forth at 8 C.F.R. § 214.2(o)(3)(v) and differ from those relating to the immigration classification now sought and discussed below. As such, the beneficiary's potential eligibility for nonimmigrant status as an alien with a demonstrated record of extraordinary achievement in the motion picture or television industry is not dispositive.

We now discuss the evidence as it relates to the statutory and regulatory requirements for the classification sought.

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, 60898-9 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, this petition seeks to classify the beneficiary as an alien with extraordinary ability as an actor. The petition, however, was initially supported by a contract for the beneficiary to produce films. Thus, we will also consider the beneficiary's achievements as a producer. 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).

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser

internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). Thus, the “international” nature of the Toronto International Film Festival is not dispositive.

The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field. The petitioner has not demonstrated that the Toronto International Film Festival can be distinguished from the numerous film festivals that are held worldwide or that it is on the scale of the Academy Awards, which includes foreign films such as “Life is Beautiful.” In fact, the frequent references to the Toronto International Film Festival as often predicting Academy Award nominations suggest that the festival itself is not on the same level as those awards.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3) explains that the one-time achievement serves as evidence of *the alien’s* achievements. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the *alien’s receipt* of lesser prizes and awards. We cannot conclude that evidence to meet the one-time achievement is less demanding. Thus, the petitioner must demonstrate that the beneficiary, and not merely the film on which he worked, received an award at the Toronto International Film Festival.

Initially, the petitioner submitted the “awards” page from the beneficiary’s entry on the Internet Movie Database (IMDB), www.imdb.com/name/nm0895150/awards. The page, accessed and printed by the petitioner on April 2, 2008,² indicates only that the beneficiary won the 2008 MovieGuide Grace Award for Most Inspirational Movie Acting for the 2006 movie “Bella.” The petitioner has never asserted that this award is a one-time achievement and it is more appropriately considered below under 8 C.F.R. § 204.5(h)(i). The petitioner also submitted the IMDB awards page for the movie Bella, indicating the director of “Bella,” Alejandro Gomez Monteverde, won the People’s Choice Award at the 2006 Toronto International Film Festival.

In response to the director’s request for additional evidence, the petitioner submitted secondary evidence (newspaper articles) indicating that “Bella” won the People’s Choice Award at the Toronto International Film Festival. The petitioner did not submit an award certificate or other primary evidence of an award from this festival. The regulation at 8 C.F.R. § 103.2(b)(2) states that the non-existence or other unavailability of primary evidence creates a presumption of ineligibility. Secondary evidence may only be submitted where the non-existence or unavailability of primary evidence has been documented. The petitioner has never documented that the primary evidence of the film festival award did not exist or was unavailable.

² We accessed the page again on September 18, 2008 and it contains the same information.

The director's request for additional evidence specifically requested evidence that the beneficiary personally won the awards claimed. The petitioner's response to that notice did not include any new evidence indicating that the beneficiary individually received an award or prize. In fact, the petitioner submitted the results of the Toronto Film Festival as reported on IMDB's website identifying Mr. Monteverde as the winner of the People's Choice Award for "Bella." The director concluded that "Bella," and not the beneficiary, received an award at the Toronto International Film Festival. On appeal, the petitioner submits, for the first time, photographs of a trophy from the Toronto Film Festival, People's Choice Award, with both "Bella" and the beneficiary's name engraved on the trophy.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Moreover, the new evidence is inconsistent with the IMDB materials which indicate that [REDACTED] won the award. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, we cannot ignore that the People's Choice Award is an overall award for the film. It is not an award that recognizes individual achievement, such as an award in a "Best Actor" or "Best Screenplay" category.³

In light of the above, we are not persuaded that the beneficiary has a one-time achievement that is, by itself, sufficient in stature to be considered comparable to the sustained national or international acclaim demonstrated by meeting at least three of the lesser regulatory criteria enumerated below.

Barring the alien's receipt of such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. Significantly, while counsel has attested to the beneficiary's eligibility in general terms and has touched on some of the regulatory criteria in previous briefs, he has never explained in detail how the evidence demonstrates that the beneficiary meets at least three of the regulatory criteria.

³ Unlike a targeted joint award, such as a Nobel Prize issued to two collaborators, an award recognizing an entire film cannot be credited to everyone who worked on the movie.

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

At the outset, we note that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), quoted in italics above, contains three important requirements. First, the alien must be the recipient of the prize or award. Second, the prizes must be nationally or internationally recognized prizes or awards. Finally, the prizes or awards must recognize excellence in the alien's field of endeavor, in this case, acting and producing. Thus, prizes that were not received by the alien individually, that are not recognized in the field, or that recognize attributes other than excellence in the field of endeavor, in this case acting and producing, cannot serve to meet this criterion.

As stated above, the petitioner initially submitted the "awards" page from the beneficiary's entry on IMDB indicating that the beneficiary won the 2008 MovieGuide Grace Award for Most Inspirational Movie Acting for the 2006 movie "Bella." The petitioner also submitted the awards page for "Bella" on the same website, www.imdb.com/title/tt0482463/awards, reflecting that Bella won two awards at the 2007 Heartland Film Festival. **Specifically, the film won the Crystal Heart Award and Mr. [REDACTED] won the Grand Prize for Dramatic Feature.** Finally, as stated above, [REDACTED] won a People's Choice Award for the film in 2006 at the Toronto International Film Festival.

The director requested evidence that the beneficiary was the recipient of the above awards. In response, counsel reiterates the awards won by "Bella" and notes that the beneficiary personally won the Grace Award. The petitioner submitted an "independent film blog" entry stating that "Bella" won a prize at the 31st Toronto International Film Festival, a "Wikipedia" entry for the Heartland Film Festival indicating that Bella won the Grand Prize for Best Dramatic Feature, the beneficiary's entry in "Wikipedia," and an article with no author, publication or date indicating that Focus on the Family awarded "Bella" Family Film of the Year "for its celebration of faith, family and life." The petitioner also submitted evidence that the beneficiary, a television commentator and an editor at the *National Review* were honored at the 25th Anniversary Partnership Dinner of the Morley Publishing Group, Inc. and *Crisis Magazine*. The record lacks evidence that this honor is a nationally recognized acting or producing award. The petitioner also submitted a 2007 Legacy Award from the Smithsonian Latino Center for "Bella." News publications indicate the award was issued to the beneficiary as "actor/producer" jointly with the director of the film, [REDACTED]. As will be discussed below, however, the evidence submitted on appeal reveals that while a Legacy Award was issued in the film category in 2007, the beneficiary and Mr. Monteverde were only recognized as "emerging talent."

With regard to the information posted on "Wikipedia," there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*,

⁴ Online content from "Wikipedia" is subject to the following general disclaimer:

Wikipedia is an encyclopedia on the internet that is edited by anyone who wants to help. The way it works means that anyone with who [sic] can view the internet can change what is

No. 07-2276 (8th Cir. August 29, 2008). As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source.

The director questioned why the awards themselves were not submitted in response to the director's unambiguous request for such evidence, but concluded "it is probably true that the awards were issued." The director concluded that all of the awards except the Grace Award were won by the film and not the beneficiary individually. Regarding the Grace Award, the director concluded:

The record lacks documentary evidence regarding the criteria and significance of this award, the award's scope, the requirements necessary to compete for the award, and the criteria utilized to select the recipient. The record lacks documentation indicating the website garners any acclaim or their awards are highly coveted by actors at the top of the field.

Finally, the director noted that the Smithsonian Legacy Award honors "role models of Hispanic heritage who have made a significant impact on American culture and society through their work." The director concluded that the petitioner had not demonstrated the significance of this award.

On appeal, the petitioner submits photographs of award trophies, including the 2008 NCLR ALMA for Outstanding Cast in a Motion Picture. This award was issued after the date of filing. For the reasons stated above, the director correctly determined that the petitioner must establish the beneficiary's eligibility as of the filing date in this matter. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also submits the "Gala Issue" of *MovieGuide* covering the 16th Annual MovieGuide Faith and Values Awards sponsored by the Christian Film and Television Commission and the John Templeton Foundation. These materials reveal that the awards only recognize a specific genre of movies. Specifically, the Grace Award won by the beneficiary is not an award that sets apart the recipient from other movie actors in general. Rather, according to the letter from Leslee Scallon, Senior Producer for *MovieGuide*, it recognizes the "most inspirational performance."⁵ While we do not question the merit of such recognition for its own sake, any considerations other than acting skills that serve to reduce the pool of candidates, such as age, religion, ethnicity or values communicated in the film, reduce the usefulness of this award in singling out the beneficiary among other actors, the ultimate purpose of the regulatory criteria.

written. When you read Wikipedia, you should remember that we cannot make sure that our information is checked by people who can make it complete, accurate or reliable.

See http://en.wikipedia.org/wiki/Wikipedia:General_Disclaimer, accessed on September 18, 2008.

⁵ The award recognizes performances that exemplify "God's grace and mercy toward us as human beings through their outstanding performances." *See* www.movieguideawards.com/2008/grace.html (accessed September 18, 2008).

The petitioner also submits the program for Smithsonian Con Sabor 2007. Counsel requests that the AAO “take administrative notice of the artistic and cultural stature of the Smithsonian Institute.” At issue, however, is not the reputation of the Smithsonian, but the award it actually issued to the beneficiary. The materials submitted on appeal reveal that not only is the recognition limited to Hispanics who have influenced U.S. culture, but the 2007 honors were specifically limited to Mexican influence on the United States. Moreover, the beneficiary was not recognized for his contribution in film, one of the Legacy categories. Rather, he and [REDACTED] were honored as “emerging talent.” The petitioner has not explained how recognition as “emerging talent” is consistent with the national or international acclaim standard established by Congress.

As stated above, the petitioner also submitted an undated article from an unidentified publication announcing that “Bella” was awarded the Family Film of the Year Award from Focus on the Family. The record contains no evidence that the beneficiary personally received this award. The record also lacks evidence that this award is a nationally *recognized* award in the film industry such that filmmakers aspire to win this award.

While the petitioner initially submitted the materials from IMDB’s website indicating that “Bella” won the Crystal Heart Award at the Heartland Film festival, only on appeal does the petitioner submit a photograph of the award listing the beneficiary’s name with the names of the other producers. The record lacks evidence that this award is a nationally recognized award.

On appeal, the petitioner submitted a May 1, 2008 article listing the beneficiary as nominated for a Univision award. The record contains no evidence that the beneficiary won this award or that he won this award prior to the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Also on appeal, the petitioner submitted evidence that the 9th Festival Internacional Tamaulipas had a “National Tribute” to the beneficiary on October 13 and 28 2007, after the date of filing. Such evidence postdates the filing of the petition and cannot be considered. Regardless, the record lacks evidence regarding the significance of this festival.

Finally, while a People’s Choice Award from the Toronto International Film Festival may be a qualifying award, as noted by the director, all of the IMDB materials provided specifically identify Mr. Monteverde as the sole recipient of this award. Even if we accept that the beneficiary is the recipient of this award, it is only one award. The regulation at 8 C.F.R. § 204.5(h)(3)(i) uses the plural in requiring evidence of qualifying prizes or awards, consistent with the statutory requirement that an alien submit extensive evidence of sustained acclaim. Even if we were to conclude that the beneficiary meets this criterion, and we do not, he would only meet one criterion. An alien must meet at least three criteria to be eligible for the classification sought.

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

Counsel's response to the director's request for additional evidence is the first time he advanced the assertion that the beneficiary meets this criterion. Specifically, counsel asserts that the beneficiary is a member of the Knights of Columbus, which counsel concedes is a Catholic organization rather than one devoted to acting. The director concluded that this membership cannot meet this criterion and counsel does not challenge that conclusion on appeal. We concur with the director that the record lacks evidence that the Knights of Columbus requires outstanding acting or producing achievements for membership as judged by recognized national or international film experts.

As noted by the director, the record also contains evidence that the beneficiary is a member of the Screen Actors Guild (SAG), a union. Counsel does not challenge the director's conclusion that SAG, while requiring experience in a competitive field, does not require outstanding achievements of its members as judged by recognized national or international film experts.

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

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 the following undated articles about the beneficiary in unidentified publications: one by [REDACTED] and another entitled "Hot Young Thing." The petitioner also submitted a 2001 article about the beneficiary entitled "Our Man from Mexico" in *Ocean Drive*. In 2003, the beneficiary was chosen as one of the "20 hottest hunks of summer" by *In Touch* magazine. The magazine included a brief discussion of the beneficiary within this feature. The beneficiary was also briefly covered in an undated piece in *Contents*. In 2003, the *Orange County Register* published a full length article about the beneficiary. The petitioner submitted February 2002 and September 2003 cover of Spanish-language *People* followed by a brief bio of the beneficiary, but the bio does not list the publication's name. Thus, it is not entirely clear from this evidence that the bio appeared in *People*. A bio of the beneficiary did appear in the May/June 2003 issue of *Hollywood Life*. The petitioner also submitted an article about the beneficiary in the June 5, 2002 edition of *Daily Variety*. Finally, the beneficiary was featured in the April 16, 2003 "Life Section" of *USA Today*. The article, however, does not suggest that the beneficiary was already nationally acclaimed in the United States. Rather, the article references a hope in Hollywood that the beneficiary "will become the next big Spanish-surname film star." The article also indicates that the beneficiary is not the only "unknown" in the (then) upcoming film "Papi Chulo."

In the request for additional evidence, the director noted that the published material all appeared to be from 2003 or earlier, which was not consistent with sustained acclaim as of the date of filing in October

2007. The director also noted that some of the material did not include the publisher, author, title or date as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In response, the petitioner submitted new published material, most of which postdates the filing of the petition or is undated. The only article about the beneficiary that predates the date of filing is an article in the July-August issue of *Celebrate Life*, a publication of the American Life League. The petitioner, however, did not submit evidence that this publication has a significant national circulation or can otherwise be considered major media.

The director properly declined to consider published materials appearing after the date of filing and concluded that the remaining materials were either not primarily about the beneficiary, were not in publications documented in the record as major media and did not show sustained acclaim in 2007.

On appeal, the petitioner submits published materials that were not previously part of the record and evidence suggesting that the beneficiary was interviewed on major television networks. Counsel “respectfully requests that [the AAO] take administrative notice that the publications listed above are periodicals of general circulation and are respected in the entertainment industry.” Finally, counsel asserts that the director’s refusal to consider published materials after the date of filing “is irrelevant is [sic] simply an incorrect interpretation of the very law cited in the Decision.”

As stated above, the petitioner must establish the beneficiary’s eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The new evidence submitted on appeal consists of the following:

1. Covers of Spanish-language publications featuring the beneficiary that are either undated or are from 2003 or earlier. The petitioner did not submit the accompanying articles, a complete certified translation or evidence that any of these publications are major media.
2. A May 2008 article in *iHola!*. This article postdates the filing of the petition and does not comply with the regulations at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) in that the petitioner did not submit a certified (or any) translation of the article.
3. Copies of the published materials submitted initially.
4. A listing of the beneficiary in a May 2003 issue of *Newsweek* as one of five “heartthrobs primed for a crossover” from Latin celebrity to general U.S. celebrity.
5. A mention of the beneficiary in a 2003 article in *Hollywood Reporter*.

6. An article entitled “Heartthrob” in an undated issue of the *Los Angeles Times*.
7. A printout from www.bellamoviesite.com listing a link to the beneficiary’s appearance on the Today Show and Fox news. The page was printed on August 27, 2008 and there is no evidence that the beneficiary was interviewed prior to the date of filing.⁶
8. A 2004 letter from *People en Español* advising that the beneficiary would be included as one of the magazine’s 50 Most Beautiful People and advising that inclusion would require an agreement to give one radio interview. The beneficiary was included in this issue.

Counsel provides no legal authority in support of his request that we take “administrative notice” that the above publications are major media. Some of the publications appear inherently local, such as the *Orange County Register*. Even if the AAO were to take “administrative notice” of the national circulation of *USA Today* and *Newsweek*, the article in the former publication is from 2003 and the brief mention in the latter publication cannot be considered to be material primarily about the beneficiary’s achievements. It remains that it is the petitioner’s burden to comply with the regulations, including providing translations of foreign language materials and evidence that a given publication is major media.

The evidence before the director consisted of published materials that ended in 2003, four years before the petition was filed or postdated the filing of the petition with the exception of a 2007 article in *Celebrate Life*. The record before the director did not establish that *Celebrate Life* constitutes major media as might be established by significant national circulation data. The petitioner also fails to submit such evidence on appeal. Thus, the published materials submitted prior to appeal cannot serve to meet this criterion.

The majority of the new materials submitted on appeal cannot be considered because the petitioner did not comply with the regulations at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii) in that the articles were not accompanied by certified translations, or any translations at all. We note that the director stated in his request for additional evidence: “Also, if you submit a document in any language other than English, it must be completely translated. The translator must certify that he/she is competent to perform the translation and that the translation is accurate.” Thus, the petitioner was on notice both from the regulations and the director’s request for additional evidence that certified translations are required for any foreign language document.⁷ The materials from *Newsweek* and *Hollywood Reporter* are not significant materials primarily about the beneficiary. The most significant article submitted on

⁶ We attempted to view both interviews via the link from www.bellamoviesite.com, but were only able to access the Fox News interview. The date of this interview is not apparent from the video clip.

⁷ Thus, certified translations can no longer be considered in this proceeding as part of a future filing, such as a motion to reopen, and would need to support a new petition. *See Matter of Soriano*, 19 I&N Dec. at 766.

appeal, appearing in *iHola*, postdates the filing of the petition and is not supported by evidence that the publication constitutes major media.

In light of the above, we concur with the director that the evidence submitted to meet this criterion is not indicative of or consistent with sustained acclaim in October 2007 when the petition was filed.

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 petitioner has never asserted that the beneficiary meets this criterion. As noted by the director, the evidence of record indicates that the beneficiary has served on political "panels" but the record does not suggest that these political issue panels involved judging the work of other actors or film producers. Counsel does not challenge the director's analysis of this criterion on appeal and we concur with the director.

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

The petitioner's initial submission and response to the director's request for additional evidence did not explicitly address this criterion, which requires evidence of a contribution that is both original and "of major significance." On appeal, counsel asserts that the director's conclusion that the petitioner has not established that this criterion is met, "simply ignores the evidence." Counsel then notes the awards discussed above. We will not presume that evidence directly relating to one criterion is presumptive evidence that an alien meets a second criterion. Such a presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. Counsel then states that the beneficiary "has been honored by the White House and has been invited to speak at numerous artistic and cultural events." The record confirms that the beneficiary is an activist, but, as stated above, these activities do not relate to his fame as an actor or producer. Moreover, simply speaking at events does not demonstrate an impact on any industry.

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. To be considered a contribution of major significance in the arts, it can be expected that the beneficiary would be demonstrably influential such that his style is emulated in the field. A claim to meet this criterion cannot simply be advanced without explanation. Rather, it is the petitioner's burden to identify a specific contribution and explain and document how the field has been profoundly changed by that contribution.

The petitioner has never explained how the beneficiary's career has impacted the film industry to such a degree that he can be said to have made a contribution of major significance to the industry. For example, the record contains no evidence that other studios are successfully emulating his style.

Moreover, as the beneficiary's most significant film had only just begun screening as of the date of filing, it is not clear that the influence of this film could be gauged as of that date.

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

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

The petitioner has never asserted that the beneficiary meets this criterion and the record contains no evidence relating to it.

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

The director concluded that the political events attended by the beneficiary were not artistic exhibitions or showcases and that "display" of a movie is inherent to the film industry. Counsel does not dispute this claim on appeal. Nevertheless, additional discussion is warranted.

First, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion applies to the visual arts. The beneficiary is a performing artist. That said, we acknowledge that there may be instances where a film is part of an artistic exhibition or showcase such that the exhibition may be considered comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).⁸

The evidence submitted to meet a given criterion must be indicative of or consistent with sustained national or international acclaim in the field if that statutory standard is to have any meaning. Thus, in order to meet this criterion, the exhibition or showcase must be so exclusive that the selection to be displayed in and of itself sets the artist apart from other members of the field.

The beneficiary's film, "Bella," has been screened at film festivals. The petitioner has not submitted evidence regarding the standards for these screenings. For example, if any producer or director who pays the required fee can show his or her film at the festival, the very fact that the film was screened at the festival is not by itself indicative of or consistent with national or international acclaim.

Without evidence that the film festivals are exclusive in the films they choose to screen, the petitioner cannot establish that the beneficiary 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 director considered the beneficiary's appearance at events promoting social causes and concluded that the beneficiary had not played a leading or critical role for the sponsoring organizations. Counsel does not specifically challenge this conclusion on appeal and we concur with the director. Moreover,

⁸ Such a claim should be advanced by the petitioner or counsel to be considered.

the sponsoring organizations were not within the film industry. Thus, the beneficiary's appearances do not relate to his alleged acclaim as an actor or producer.

We acknowledge that the beneficiary produced and starred in a film that won the People's Choice Award at the Toronto International Film Festival and other accolades. A film, however, is not an organization or establishment.

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

While the petitioner submitted evidence of the beneficiary's income of \$110,880 in 2007 in response to the director's request for additional evidence, the director concluded that the petitioner had not established how the beneficiary's income compares with the most renowned actors in the United States, where the beneficiary earned his income in 2007. Counsel does not address this issue on appeal and we concur with the director's analysis.

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

While the petitioner provided evidence of the theatrical release for "Bella," the director concluded that the evidence did not demonstrate that the film enjoyed commercial success. Counsel does not expressly contest this conclusion on appeal and we concur with the director that the record lacks box office receipts consistent with commercial success.

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 beneficiary has distinguished himself as an actor 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 beneficiary shows talent as an actor and producer, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

This decision is without prejudice to a future filing. We acknowledge that the response to the director's request for additional evidence and the appeal includes evidence that we cannot consider either because it does not relate to the beneficiary's eligibility as of the date this petition was filed⁹ or it was previously

⁹ See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

requested by the director but not submitted until the appeal.¹⁰ Any new petition, however, should include a detailed explanation, supported by the record, of how the beneficiary meets every element of the three or more criteria he is alleged to meet. In addition, any new petition should include complete certified translations of any foreign language document, including published materials. 8 C.F.R. § 103.2(b)(3), 8 C.F.R. § 204.5(h)(3)(iii).

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.

¹⁰ See *Matter of Soriano*, 19 I&N Dec. at 766; see also *Matter of Obaighena*, 19 I&N Dec. at 537.