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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
LIN 07 098 51521

Office: NEBRASKA SERVICE CENTER

Date: AUG 05 2009

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)

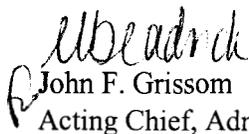
ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. 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, in reaching this conclusion, the director concluded that the petitioner failed to meet three of the ten regulatory criteria.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 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 February 12, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a performer in Chinese opera.

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 under 8 C.F.R. § 204.5(h)(3).

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

To fulfill this criterion, the petitioner initially submitted the following evidence:

1. A letter from the White House, dated August 31, 2001, and one from Former Senator Hillary Clinton, dated July 24, 2001, both of which congratulated the petitioner as a recipient of a 2001 National Heritage Fellowship of the National Endowment for the Arts;
2. A certificate of award for the petitioner's outstanding performance and contribution to the 2006 Peking Opera Festival, dated October 29, 2006;
3. An award for the petitioner's participation in "The Spider Withes" on October 28, 2006;
4. A certificate of award for the petitioner's participation in the Chinese Cultural Festival New York in 2006;
5. A first prize award from the Ministry of Culture at the National Youth Chinese Opera Competition, dated January 2001;
6. A "Notice Concerning Participating in National Youth Chinese Opera Competition" indicating that 370 actors were selected and recommended by cultural departments and bureaus of local government to participate and that 140 final contestants were decided by the Ministry of Culture;
7. A certificate of award from China Central Television ("CCTV") for the "Excellent Performance Prize" at the 2001 Hayaoliu Cup Chinese National Peking Opera Artists Television Performance Competition;
8. A certificate of award for the Silver Prize at the 5th China National Peking Opera Artists Television Performance Competition held by CCTV, dated October 2005;
9. A certificate of award for the "Best Performance Prize" at provincial "Five No. 1" Arts Project Competition, dated December 1996; and

10. A certificate of award for the “Encouraging Prize” at the Beijing Hong Xuefeng Youth Chinese Opera Competition, dated May 1998.

In Response to the Request for Information (“RFE”), dated March 31, 2008, the petitioner provided the original award in item 2. On appeal, item 5 was resubmitted with a corrected translation. Items 7 and 8 were also provided again on appeal. In addition, a page from China’s Ministry of Culture website was submitted, indicating that its responsibilities included “promoting various types of art, and managing national cultural events.” An internet printout from CCTV’s website was also provided that said its channel is the “main channel of information for the whole country.” The petitioner also submitted a document from China’s Ministry of Culture, dated April 26, 2008, regarding the National Excellent Youth Peking Opera Performers Competition in 2001 (item 5), which explained that the ages of the participants ranged from 18 to 40 years old from various provinces of China and confirmed the petitioner’s receipt of first prize. With regard to the same competition, an internet printout from www.cavtv.com was provided that indicated 140 participants were selected by a panel of experts from 370 professional Peking Opera performers. The petitioner also produced a document, dated April 21, 2008, from CCTV regarding the 5th National Youth Peking Opera Performers Competition (item 8). The document indicated the following about the competition:

The age of the candidate was restricted within 40 years old. In China, titles of the artists are divided into two categories based on age/generation instead of level of art. The “young/youth” artists are actually of the same attainments as the older generation of artists. The word “young/youth” does not purport their level of skill but simply emphasize their generation relative to the older generation artists. This is to show respect to the older generation artists.

Another web page was provided from <http://cflac.org.cn>, dated July 16, 2008, with a partial translation of the pertinent paragraph which mentioned that “since CCTV held the ‘National Youth Peking Opera Performers Competition’ in 1987 for the very first time; it has already been so successful five times.” The petitioner also submitted a news report from the *World Journal*, dated August 27, 2008, which detailed the high ratings and advertising income that CCTV received during the Olympic Games. Lastly, the petitioner described the process of selecting participants for items 7 and 8 in his own affidavit that he submitted. The petitioner’s affidavit attested to CCTV having held only five “National Youth Peking Opera Performers Competitions” for professional Peking Opera performers and that to his knowledge the “participants were recommended by the key theatres or troupes, and then were filtered through competitions held by each provincial TV station.”

In his decision, the director found that the petitioner did not meet this criterion. We concur with the director’s finding that there is no evidence showing that these prizes constitute nationally or internationally recognized prizes for excellence in the petitioner’s field. More specifically, for items 1, 2, 3, 4, 7, 8, 9, and 10, the petitioner failed to submit any additional evidence, other than the award or certificate, to demonstrate that these certificates represent nationally or internationally recognized prizes, such as supporting evidence showing the prestige associated with receiving the awards or some other evidence consistent with national or international acclaim at the very top of the field.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. Moreover, the record even lacks general information about the competitions (such as the award criteria, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition). Although the petitioner provided information regarding CCTV and the competitions referred to in items 7 and 8, the evidence still failed to address any of the above-referenced issues. Rather, the additional information provided on appeal dealt with the number of competitions CCTV has held, the age of the competitors and the importance of CCTV in China. The petitioner did attempt to provide further evidence regarding the selection process for items 7 and 8 through his own affidavit. However, the information contained in his affidavit was very vague, not definitive about the process, e.g. "to the knowledge of the petitioner," and did not represent objective independent evidence. In addition, as noted by the director in his decision, we agree that items 2, 3, and 4 appear to be solely participation certificates, rather than prizes or awards.

Moreover, with regard to the competition referred to in Item 5, additional information was provided in item 6 and on appeal addressing the petitioner's selection as a final contestant, and then as a first prize winner, from 370 professional actors by the Ministry of Culture. Additional information was also provided regarding China's Ministry of Culture, however the information was very general and failed to demonstrate that the award was a recognized national or international award. Nonetheless, even if the AAO found this award to be a nationally recognized award for excellence in the petitioner's field, this award was given to the petitioner 6 years prior to him filing this application. As such, this award would not exemplify *sustained* acclaim.

In light of the 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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted a membership certificate for the Chinese Dramatists Association ("CDA") indicating its issue on May 2000 and the petitioner's working unit as Peking Opera Troupe of Beijing. The petitioner also provided a translation of a document entitled "Introduction to China Dramatists Association" without a source or date. This "Introduction" stated that the CDA is an "elite national group of more than 10,000 members" and that membership is "judged by recognized

international experts in their discipline or fields.” Further, it indicated that members must have solid basic skills, outstanding performance ability, have won “many times national, provincial or local recognized prizes” and have been dedicated to an arts career for at least 10 years. Moreover, this document described the election to membership as being “subject to a 2/3 Membership Committee, which must subsequently be approved, by a 2/3 vote of the Board of Director.” The petitioner also provided a membership certificate for the Helongjiang Province’s Dramatist Association indicating its issue on December 1996 and the petitioner’s working unit as Helongjiang Province’s Peking Opera Troupe. The petitioner provided a translation from the Helongjiang Liter-Arts Cycles Association, dated October 21, 2001, which listed the same membership requirements as required by the CDA with almost identical language and in the same order. In addition, the petitioner provided a professional rank certificate from the Beijing High Level Professional Rank Evaluation Committee, dated December 5, 2005, indicating that the petitioner’s professional rank is a Class-2 Performer. The petitioner also provided a translation “Notice Concerning Year Examine and Appraisal Professional and Technical Titles,” dated July 12, 2001. The petitioner also provided the following three letters of appointment; one appointment was to the Evaluation Committee of “Yanjin Cup” National Peking Opera Competition, dated December 2000, another appointment was as the Arts Consultant of “Children’s Peking & Kunju Opera Arts Troupe” of Beijing City’s Cultural Bureau, dated June 2003 and one as the Artistic Consultant with the Beijing Chinese Opera.

In response to the RFE, the petitioner submitted a letter, dated April 28, 2008, from the Chinese Theatre Association (“CTA”) confirming the petitioner’s membership, as well as an internet printout from the CTA’s Website, indicating that the organization had approximately 12,700 members until the end of 2005. On appeal, the petitioner provided a corrected translation for the document provided by the Heilongjiang Federation of Literary and Art Circles, dated October 21, 2001, which essentially contained the same information. The petitioner also submitted a certificate of his membership in the CTA, as requested by the director in his decision, which indicated he was admitted as a member in May of 2000. The petitioner also provided a certificate from the CTA, dated August 26, 2008, which stated that a candidate for membership must be a member of a provincial theatre association, have gained multiple nationally recognized awards and enjoy a high reputation and achievement in the field of theatre. This certificate from CTA then explained that once a candidate has met those requirements, a group of theatre experts discussed and decided whether a candidate should be admitted to membership.

The director concluded that the petitioner failed to establish that outstanding achievements are required for membership in any of the organizations. We agree and find that the record lacks evidence (such as membership bylaws or official admission requirements) showing that any of the groups require outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field or an allied one. While the petitioner provided membership requirements for CDA and for the Helongjiang Province’s Dramatist Association, the requirements for both associations contain almost identical requirements and wording, and also closely resemble the wording of in USCIS regulations. Moreover, the translation accompanying the CDA membership requirements fails to indicate a source. Despite the director’s questioning of these documents and stating the need for additional documentation, the petitioner provided no new evidence to ameliorate them in response to the RFE or on appeal. Further, it is noted that the CDA

document indicated that its organization had 10,000 members. An organization with 10,000 members does not suggest exclusivity or restrictive requirements that a candidate be outstanding. Likewise, the CTA website indicated its organization had 12,700 members, which similarly would not be commensurate to meet this highly restrictive classification. Moreover, there was no evidence regarding the nature of the petitioner's appointments, or if such appointments would be consistent with membership in an association. The record additionally lacks evidence demonstrating that membership is judged by recognized national or international experts in the field. While the CTA certificate indicates "a group of theatre experts" ultimately decide on membership, there is no specific discussion as to the names of these experts or what qualifies them as experts.

Finally, the petitioner's submission of his Class-2 Performer Intermediate Professional Rank certificate also fails to provide support for this criterion. According to the materials submitted, promotions to middle and high ranks are awarded after a "rigorous examination and appraisal, recommended by each unit to bureau office leading group to check overall performance, and then refer the matter to adjudicator group." (Grammar as it appears in the translation.) Those seeking a high rank must "exceed the standards for five years in succession." Those reaching or exceeding "the standards" are qualified for continuous employment. Finally, rank appears to relate to a wage scale. The petitioner does not explain how his professional rank constitutes a "membership."

As such, the petitioner has not established that he meets this criterion.

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

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 level from a local publication or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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.¹

The petitioner initially submitted as evidence:

1. An "article" without a title or author from a website, www.ce.cn, dated February 2, 2007, with a picture of the petitioner and a reference to the petitioner as a "makeup man, the Peking Opera performing artist;"

¹ 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.

2. An “article” without a title or author from a website, <http://peopledaily.com>, dated February 3, 2007, with the same picture of the petitioner as in item 1, but with no caption mentioning his name but merely referencing him as an “artist of Beijing Opera;”
3. An “article” without a title or author from a website, <http://english.people.com>, dated December 5, 2006, with a picture of the petitioner that only generally referred to him as a Chinese Beijing Opera artist;
4. A partial article entitled, “Minister on Chinese Culture Today,” without an author, from a website, www.china.org, dated December 5, 2006, which does not even mention the petitioner;
5. A printout from the John F. Kennedy Center’s website which indicates there is a Festival of China at the Kennedy Center in October of 2005, without an author, which does not mention the petitioner;
6. A partial article from the *New York Times* website entitled, “As China Raises Its Arts Profile, Officials Try to Catch Up,” written by Lynette Clemetson, dated July 18, 2005, which does not mention the petitioner;
7. A partial article from the *New York Times* website entitled, “On the Potomac, a Cultural Evolution,” written by Lynette Clemetson, dated October 1, 2005, which does not mention the petitioner;
8. A partial article from <http://news.xinhuanet.com> entitled, “Hu, Bush hail opening of Festival of China in US,” dated October 1, 2005, without an author, which does not mention the petitioner;
9. A partial article from <http://english.cri.cn> entitled, “Hu, Bush Welcome Opening of China Festival,” without an author, dated November 19, 2005, which does not mention the petitioner;
10. A partial article from www.highbeam.com entitled, “Chinese, US presidents hail opening of Festival of China in Washington,” without an author, dated October 2, 2005, which does not mention the petitioner;
11. An article from the *Washington Post* website entitled, “Two Countries on the Potomac,” written by Jacqueline Trescott, dated March 2, 2005, which does not mention the petitioner;
12. An “article” from www.chinanews.com entitled, “Peking Opera News,” without a certified translation, author or date, which has a picture of the petitioner with a caption that refers to him as a leading performer;
13. An article from www.dongdongjiang.com entitled, “The First Modern Opera Performance in New York won highly appreciation,” that was not completely translated, without a date or author, which mentions the petitioner only to state his role in the opera;
14. The same article and translation from item 13 from a different website, www.sinovision.net, which was also not completely translated, was without a date or author, and was not about the petitioner;
15. The same article and translation from item 13 and 14 from a different website, www.shidanguocui.com, which was also not completely translated, was without author and was not about the petitioner, but was dated December 30, 2006;
16. The same article and translation from item 13, 14 and 15 from a different source, *World Journal*, which was also not completely translated, was without an author and was not about the petitioner, but was dated December 29, 2006;

17. An article entitled, "The Grand Opening of Lincoln Center Out of Doors Festival," from *Sing Tao Daily*, without an author, dated August 24, 2006, which only mentions the petitioner to state in which production he performed;
18. An article entitled, "The first-class cast of American 6th Peking Opera Arts Festival performed 'The Monkey King fights the White-Bone Demon Three Times,' winning highly appreciation in New York," from *Ming Pao Daily News*, without an author, dated October 5, 2006, with a partial translation that only mentioned the petitioner to state his role in the performance;
19. The same article as item 17 from a different source, *World Journal*, without an author, dated August 24, 2006, which only mentions the petitioner to state in which production he performed;
20. The same article and translation from item 13, 14, 15, and 16 from a different source, *The China Press*, which was also not completely translated and was not about the petitioner, but was dated December 28, 2006 and written by Zhao Yajun;
21. The same article as in item 17 and 19 entitled, "Chinese Opera presented at Lincoln Center Out of Doors Festival," with a different source, *The China Press*, without an author, dated August 24, 2006, which only mentions the petitioner to state in which production he performed;
22. A condensed article, which was the same one as in items 17, 19 and 21, from the *World Journal* entitled "Lincoln Center From Chinatown With Love," without an author, dated August 26, 2006, which only briefly mentions the petitioner;
23. An article from *Ming Pao Daily* entitled, "The funny clown show on Chinese Peking opera festival," without an author, dated October 30, 2006, which only mentions the petitioner's name in a caption for a photograph referring to him as a leading actor;
24. An advertisement or announcement from the *World Journal* entitled, "The Qishufang Peking Opera Company held the 6th Chinese Peking Opera Arts Festival," dated October 26, 2006, without an author and which only listed the petitioner as a major performer;
25. A picture from the *World Journal*, dated December 18 without a year and without an author, title or certified translation, which did not mention the petitioner's name but his photograph was in the paper;
26. An article from the *World Journal* entitled, "The Oriental Opera and Arts Company present famous Peking Opera productions in appreciating the American Audience," without an author, dated December 6, 2006, which contains only a partial translation and only briefly mentions the petitioner's name;
27. An article from the *Beijing Evening News* entitled, "The Grand Opening in memorizing of the 90th Birthday Party of Master Qui Shengrong," without an author or full translation of the article, dated September 2, 2005, which only mentioned the performance in which the petitioner participated;
28. An article from *The China Press* entitled, "The Grand Chinese Opera Performance in New York at Christmas for memorizing 40 years' Modern Peking Opera," without an author or a full translation, dated December 8, 2006, which only briefly mentioned the petitioner's name in conjunction with his role in the performance;
29. The same article as in item 28 but from a different paper, *The SinoAmerican Times*, without an author or full translation, dated December 8, 2006;

30. An article from *The China Press* entitled, "The Kunqu Society presents excellent performance on 18th," without an author, dated November 11, 2006, which mentions the petitioner to identify what roles he will have in the performances;
31. A condensed form of the article in item 30 in a different paper, *World Journal*, entitled, "The Excellent Yearly Performance presented by The Kunqu Society," without an author, dated November 7, 2006, which only briefly mentions the petitioner in conjunction with the roles he will perform;
32. Almost the same article as in items 30 and 31 from the *World Journal*, entitled "The Kunqu Society presents excellent performance on 18th," without an author, dated November 16, 2008, which only briefly mentions the petitioner; and
33. An article from the *World Journal*, entitled "The Kunqu Society presents excellent performance, two generations perform together," without an author, dated November 4, 2006, which only briefly mentions the petitioner's role in performance.

In response to the RFE, the petitioner provided the following as evidence:

34. A DVD which the petitioner purports deals with his performances in New York and China with other actors;
35. An article from *The China Press* entitled, "No. 8 Beijing Opera Festival Performs in Public on May 2 in New York University Theatre," without an author, dated April 16, 2008;
36. An article from *The China Press* entitled, "The Shang Discipline Art Conquered New York Audience," without an author, dated July 11, 2007, which only briefly mentioned the petitioner to indicate his role in the performance; and
37. An article from the *World Journal* entitled, "Ballet Beijing Opera Troupe Rehearsal Won Cheering," without an author, dated December 18, 2009, which only briefly mentions the petitioner and which appears to only be a partial translation.

On appeal, the petitioner submitted the following as evidence to meet this criterion:

38. The same article as in item 35, with a slightly different translation, yet still no author was provided;
39. An internet printout from the website of *The China Press*, which explained that the paper is "issued in Los Angeles, New York, and San Francisco" and "sold to many cities with large Chinese populations in America;"
40. Previously submitted articles, but this time they were submitted without translations; and
41. Item 34 was resubmitted, a DVD of a story that CNN covered regarding a performance at the American Museum of Natural History, accompanied by pictures taken at the event which were not published but appeared to be personal photographs of the petitioner.

The director found that the petitioner failed to satisfy this criterion, and we concur with his decision. Among many other deficiencies noted by the director, the director found that none of the articles initially submitted were primarily about the petitioner. The plain language of this regulatory criterion requires that the published material be "about the alien." We agree, and add that there was only one article after a review of the entire record, item 35 (38), which was provided that was about the

petitioner. All the other articles, if the petitioner was mentioned at all, just briefly stated the petitioner's role in a performance that was being covered by the publication or captioned his name under a photograph. Nonetheless, item 35 (38), as well as items 36 and 37, postdate the date of filing the petition. A petitioner 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 (Comm. 1971). Accordingly, the AAO will not consider these articles in the proceeding. It is also noted that the evidence provided in item 35 (38) is deficient, and will be discussed in further detail below, insofar as the petitioner failed to provide the author's name and to demonstrate that the publication which contained the article could be considered a professional or major trade publication or other major media.

In addition, this criterion specifically requires that the evidence submitted contains a title, date, author and translation, if necessary. However, the petitioner failed to provide a title for items 1, 2, 3, and 25. Likewise, dates were omitted in items 12, 13 and 14. The petitioner also did not submit the name of the author for the evidence submitted in items 1, 2, 3, 4, 5, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37 and 38. Moreover, many of the articles, including items 8, 9, 13, 14, 15, 16, 18, 20, 26, 27, 28, 29, and 37, were not accompanied by complete translations as required by 8 C.F.R. § 103.2(b)(3) and instead only partial translations were provided.² Without complete translations, the actual content of the articles cannot be ascertained. The petitioner additionally provided evidence, e.g., items 12 and 25, without certified translations.

The publication of photographs or the broadcast of radio or television interviews do not qualify the petitioner under this criterion. The specific regulatory requirements reference published written work instead of visual or audio work. As such, the photographs in items 1, 2, and 3, without an actual accompanying article, do not qualify the petitioner under this criterion. Regardless, the petitioner was not even mentioned by name in any of the captions underneath the photograph except for one. Additionally, as a television interview also does not meet the plain language of this regulation, the evidence contained in item 34 (41) cannot satisfy this criterion either.

As noted by the director, many of the articles also contain identical content but were featured in different sources. For example, items 13, 14, 15, 16, 20, items 17, 19, 21, 22, items 28 and 29, and items 31, 32, 33, use the exact same wording for each of these four articles. This seems to suggest that the articles are actually press releases. Because press releases are promotional materials released by the entity or agent producing the performances, such evidence would not satisfy this criterion.

Finally, there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. Many of the articles appear in regional papers rather than nationally or internationally circulated publications. Regional coverage or coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim. On

² Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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.

appeal, an internet printout from the website of *The China Press*, which explained that the paper is “issued in Los Angeles, New York, and San Francisco” and “sold to many cities with large Chinese populations in America” (item 39) was submitted. However, this evidence failed to show that *The China Press* is a widely circulated publication in America or China. Moreover, no evidence about the other sources or the reliability of their contents was provided.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). For example, judging a national competition for top opera performers is of far greater probative value than judging a local competition for youth or novices.

The petitioner did not initially claim to satisfy this criterion. However, the petitioner did provide a letter of appointment to the Evaluation Committee of “Yanjin Cup” National Peking Opera Competition, dated December 2000, in order to show his membership in an organization as previously discussed. As such, in his RFE, the director requested further information regarding the petitioner’s appointment to determine whether it involved judging the work of others. However, no new evidence was provided in response to the RFE for this criterion. As such, the director found that the petitioner did not satisfy this criterion.

On appeal, the petitioner submitted a certificate of engagement by CCTV indicating that CCTV hired the petitioner as judge of the “Yanjing Cup National Amateurish Peking Opera Competition in the final,” dated December 2000. The petitioner also provided another certificate from CCTV, dated August 25, 2008, which explained that the Yanjing Cup involved “participants from all over the country” who were “strictly filtered by selective trials” at the local level and that “only the top participants of each province were qualified for the national final.” Further, the certificate indicated that the judges were required to be “experts of high authority in the field of Peking Opera” and “through prudent discussion, the organizing committee of the competition decided to invite” the petitioner. It also stated that the “panel was constituted by nationally famous Peking Opera performers and senior experts.”

The additional evidence provided on appeal appears to classify the Yanjing Cup as an amateur competition, as witnessed in the evidence by the title of the competition. As stated above, judging a competition for novices has less probative value than judging a competition for professionals. Moreover, while information was provided regarding the single instance the petitioner was selected as a judge, it was very general and failed to specifically provide the requirements necessary to become a judge. As a result, the record lacks evidence establishing the level of prestige associated with judging the Yanjing Cup, such as the performers the petitioner evaluated and/or their levels of expertise or other evidence of his judging that is indicative of this highly restrictive classification.

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.

The petitioner did not claim this criterion initially or in response to the RFE. However, on appeal the petitioner argued that this criterion applied to him and offered several letters of recommendation, in an attempt to satisfy this criterion. The letters provided discuss the petitioner's talent as a performer, his training, and examples of where he has performed. However, they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific artistic achievements rise to the level of original contributions of major significance in the field. 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 artistic talent is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other performers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

Additionally, the petitioner provided posters, brochures and playbills from lectures and performances in which he has participated. This evidence, however, also fails to show that the petitioner's participation in these performances represent contributions of major significance. Further, most of this evidence was dated after the petitioner's application was filed. As a petitioner must establish eligibility at the time of filing, this postdated evidence cannot be considered. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also resubmitted various awards, which were previously considered under the awards criterion. In addition, a new award from the Social Security Administration was provided. However, this award also postdates the filing of the application. Nonetheless, none of these awards demonstrate that the petitioner made a contribution of major significance. Likewise, articles were submitted that also failed to show that the petitioner made a specific contribution of major significance to his field. For example, a partial translation from a periodical, Anhui New Theatre, indicates that "it is so difficult to find [even] one 'Jing (the painted face).'" However, this article, as well the other evidence provided, does not specifically show the petitioner's contribution of major significance as a Jing or as an opera performer.

As such, the petitioner has not provided sufficient evidence to meet this criterion.

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

The petitioner did not submit any identifiable evidence regarding this criterion initially or in response to the RFE. In his decision, the director also indicated that this criterion was not claimed and that the record does not establish eligibility for this criterion. Nonetheless, on appeal, the petitioner argues the following evidence demonstrates the display of his work at artistic exhibitions or showcases:

1. A brochure of the Performance in Memory of the Great Peking Opera Master Qui for his 90th birthday, without a translation of the document;
2. A brochure of a performance in Japan, without a translation of the document;
3. A poster of a performance in Germany, without a translation of the document;
4. A brochure for the Famous Artists and Plays Special Performance at the Sidney Opera House, without a translation for the sections not in English; and
5. A brochure of the 12th Anniversary Annual Show of Les Ballets de l'Opera Chinois de New York, Inc.³

The plain language of this 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 performing arts to perform. Therefore, not every performance is a showcase or exhibition of the work of every performer. Without evidence that the petitioner's performances were comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion.

In addition to the record lacking any evidence to show that these performances were comparable to exclusive artistic showcases, the petitioner also failed to provide translations for items 1, 2, 3, and 4. As previously stated, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. Without such translations, we cannot verify the evidence is what it purports to be.

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.

³ The name of the opera on the brochure is misspelled as "l'Opera," rather than "l'Opera."

The petitioner did not submit any evidence for this criterion initially or in response to the RFE. As a result, the director did not find that the petitioner fulfilled this criterion. On appeal, however, the petitioner provided the following evidence:

1. A page from a website, www.bjo.com, that provides a brief introduction to the Peking Opera Theatre of Beijing, which indicates that this opera is the biggest one in China;
2. A certificate of the petitioner's employment in the Peking Opera Theatre of Beijing, issued on October 10, 2005;
3. A brochure of performances of Troupe No. 1 of the Peking Opera Theatre in Beijing with a partial translation, which again expresses that the Peking Opera Theatre in Beijing is the largest troupe in China and represents excellence and high quality;
4. A recommendation letter from the President of the Peking Opera Theatre in Beijing, dated November 25, 2006, which indicates he was appointed as a "main performer in Troupe No. 1;" and
5. A letter from the Director of the Beijing Ministry of Culture, undated, congratulating the Peking Opera Theatre for its opportunity to tour five European countries.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. Although the petitioner provides evidence of his involvement within the Peking Opera Theatre in Beijing, he fails to show that such involvement is commensurate with a leading or critical role. Although item 4 points out that the petitioner was a "main performer," this evidence still fails to distinguish himself from other performers in his ensemble such that his role can be considered leading or critical.

The evidence further lacks proof that the organization for which the petitioner served had a "distinguished reputation." Aside from one website, which we were provided no information about (item 1), all the evidence provided to demonstrate that the Peking Opera Theatre in Beijing was an exclusive organization came from the Peking Opera Theatre and was not independent evidence. Also, no specific evidence was included regarding the background of the petitioner's troupe or the troupe's standing in the community or world.

As such, the petitioner has not established that he meets this criterion.

On appeal, counsel argues that the reference letters submitted on the petitioner's behalf are comparable evidence of the petitioner's extraordinary ability as a performer. 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 evidence 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 the regulatory

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.

Moreover, 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 reference 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 professional acquaintances.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Finally, the AAO notes that the petitioner is currently in the United States as a P-3 nonimmigrant, a visa classification that requires the alien to perform as a performer or entertainer at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such a performer or entertainer." *See* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). The current record is devoid of any evidence to indicate that the petitioner is performing as a performer or entertainer at an internationally recognized level or that he is in the United States "temporarily and solely" for the purpose of performing as such a performer or entertainer.

While USCIS approved at least one P-3 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of*

Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 a 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.