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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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FILE: [REDACTED]
LIN 07 188 50578

Office: NEBRASKA SERVICE CENTER

Date: JUL 06 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.¹ The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that she 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

¹ The petitioner was initially represented by [REDACTED]. In this decision, the term “previous counsel” shall refer to [REDACTED].

criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on June 7, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a fine art painter and an instructor. 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).²

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

The petitioner submitted the following:

1. Information printed from the American Juried Art Salon's internet site requesting entries for its "2007 Spring/Summer Juried Art Exhibition;"
2. A letter from Oil Painters of America (OPA) stating that the petitioner's painting was "accepted into the 2006 Western Regional Juried Exhibition of Traditional Oils;"
3. Application material (blank) for the Oil Painters of America Preliminary Program 2006 National Juried Exhibition and a webpage from the Dana Gallery displaying the petitioner's painting "Portrait of a Dream;"
4. A February 28, 2006 letter from the Hilton Head Art League, South Carolina, stating that the petitioner's painting "Young Breath" was "chosen for inclusion in the Oil & Polymer category of the Hilton Head Art League 2006 National Juried Art Exhibition;"
5. A letter from the Society of Illustrators of Los Angeles stating that the petitioner's work was accepted for inclusion in the "Illustration West 44 Exhibit" and eligible for exhibition at the Billy Shire Fine Arts gallery (2006);
6. A December 7, 2005 letter from the Baker Arts Center, Liberal, Kansas, stating that the petitioner's work was "accepted into the Baker Art Center's 9th National Juried Art Exhibition;"

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

7. Internet material from the Art Kudos International Juried Art Competition and Exhibition (2005) listing its participating artists;³
8. Certificate from the New York Society of Illustrators' "Society of Illustrators Annual Scholarship Competition" bearing only the petitioner's name, university, and a date of May 7, 2004; and
9. A letter from the MidAmerica Pastel Society stating that the petitioner's work was "selected for the MidAmerica Pastel Society's 2007 Pastel National Exhibition."

With regard to items 1 through 9, there is no evidence from the events' organizers showing that the petitioner received a prize or award at these exhibitions and competitions. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The record does not include evidence demonstrating that the petitioner actually received a prize or award at the above events.

The petitioner submitted a December 12, 2006 letter from the Art Renewal Center (ARC), Port Reading, New Jersey, stating that she was "selected as one of the top one hundred finalists in the Art Center's International 2006 ARC Salon™." The letter specifically states that the petitioner's "work was not selected to receive a monetary award." While it is certainly an honor to be selected as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the event's organizers showing that the petitioner received a prize or award at this competition.

The petitioner submitted a letter from the National Oil & Acrylic Painters Society (NOAPS) stating that her painting was "selected for the Award for the Best Portrait Drawn from Life at the Sixteenth Annual NOAP Society 'Best of America' Exhibit for 2006. This honor entitles you to a monetary award of \$500.00." In response to the director's request for evidence, the petitioner submitted information from the "History" section of the NOAPS' internet site stating: "Focusing on the emerging artist, rather than the well-known painters who have already gained acceptance in the Visual Fine Arts Industry, the NOAP Society has continued to encourage these extremely talented, artists." With regard to an award won by the petitioner in an "emerging artist" competition, we do not find that such an award indicates that she "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced top competition from throughout her field, rather than limited to artists in the early stages of their career. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954

³ A notation at the beginning of the list states: "Award winners are in bold." The petitioner's name appears on the list, but not in bold. Thus, this material does not establish that the petitioner received an award in the competition.

(Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁴ Likewise, it does not follow that a painter who has had success in an “emerging artist” competition should qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner also submitted an August 7, 2006 letter from NOAPS stating: “Approximately 650 entries were reviewed by a jury panel A total of seventy nine entries were accepted from 72 artists located throughout the United States.” The petitioner’s response also includes an “Official Awards Listing” from NOAPS’ internet site reflecting that 21 artists received awards at the 2006 exhibition, including one for “Best of Show.” Thus, more than one quarter of the entries accepted for the exhibition received some form of recognition.

On appeal, the petitioner submits a July 10, 2008 letter from [REDACTED] NOAPS, stating:

The annual NOAPS exhibit is highly regarded throughout the national art community. The Best of Show Award is \$5,000 and even very well known artists are interested in competing. There are also several other awards for a total of over \$10,000 plus suppliers awards to recognize merit. Many of the very established professional artists enter our competition. Although our focus is on “emerging” artists, the selections and awards go to the best paintings. Everyone has a chance and selections into the exhibit or for awards are based on quality. Name recognition does not affect the outcome.

* * *

We consider [the petitioner] to be a very talented artist and appreciate her involvement in our competition. The jury selected her paintings into the exhibit both times that she entered the competition. She received the “Best Portrait” award in 2006. Both of her paintings were purchased by other artists.

⁴ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

█'s letter does not identify the "very established professional artists" who competed in the petitioner's "Drawn from Life" portraits category at the Sixteenth Annual NOAP Society 'Best of America' Exhibit for 2006. Further, the self-serving nature of █ statements with regard to the reputation of the annual NOAPS exhibit is not sufficient to demonstrate that the petitioner's award is nationally or internationally recognized. Finally, we cannot ignore that the petitioner's monetary award of \$500 was one tenth of the amount of the more prestigious "Best of Show" award of \$5,000.

The plain language of this regulatory criterion requires "nationally or internationally recognized prizes or awards for excellence in the field of endeavor" and it is the petitioner's burden to establish every element of this criterion. In this instance, there is no evidence demonstrating that the petitioner's "NOAPS Founder Endowment Fund 'Drawn from Life'" award had a significant level of recognition beyond the exhibition organizer. The petitioner has not established that her award was nationally or internationally recognized and that she competed against a significant number of "established professional artists" rather than a group mostly limited to "emerging" artists at the early stages of their career.

The petitioner submitted a letter from the Executive Director of the Coos Art Museum, Oregon, indicating that three of her entries were among 72 selected for exhibition at the museum's "10th Annual Expressions West 2006 exhibition." The petitioner also submitted material printed from the Coos Art Museum's internet site reflecting that her three paintings were recognized as Entries of Merit.⁵ There is no evidence demonstrating that the petitioner's Entries of Merit had a significant level of recognition beyond the exhibition organizer. The petitioner has not established that her Entries of Merit are tantamount to nationally or internationally recognized "prizes or awards" for excellence in the field of endeavor.

The petitioner submitted a certificate from the Maryland Pastel Society (MPS) reflecting that she received a "Polly Mitchell Memorial Award for Best Portrait" at the MPS "Shades of Pastel Exhibition" (2006). The petitioner also submitted a document entitled "CD Painting and Artist Listing for Shades of Pastel Exhibition 2006" reflecting that awards were also given for Best in Show, 2nd Place, Best Still Life, Best Landscape, and Merit (3). There is no evidence demonstrating that the petitioner's award from the Maryland Pastel Society had a significant level of recognition beyond the exhibition organizer and the State of Maryland. The petitioner has not established that her award is tantamount to a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted a Certificate of Excellence presented to her by the Portrait Society of America (PSA) "for recognition in the International Portrait Competition in conjunction with the eighth annual Art of the Portrait conference in Dallas, Texas." The petitioner also submitted

⁵ The internet site of the Coos Art Museum provides a listing of eight "Expressions West 2006 Winners and Honorable Mentions" (including the 1st place winner, 2nd place winner, 3rd place winner, and five honorable mentions), but the petitioner's name and her Entries of Merit are not among those listed. See http://www.coosart.org/expressions/expressions_winners2006.html, accessed on June 3, 2009, copy incorporated into the record of proceeding.

material posted on the PSA's internet site, entitled "Winners of the 2006 Portrait Competition," reflecting that various forms of recognition were conferred such as Grand Prize, Best of Show, First Place, Second Place, First Honor Award, Second Honor Award, People's Choice, Honor Awards (6), Exceptional Merit Awards (5), and Certificates of Excellence (15). The petitioner was among the fifteen individuals who received a Certificate of Excellence. In response to the director's request of evidence, the petitioner submitted an announcement and "Competition Entry Form" for the PSA's 2007 International Portrait Competition noting that "\$30,000 in cash and prizes" were to be awarded at the event. There is no evidence showing the amounts earned by the Certificate of Excellence recipients in comparison to the other more prestigious prize categories at the 2006 competition. Nor is there evidence demonstrating that the petitioner's certificate from the PSA's 2006 Portrait Competition had a significant level of recognition beyond the exhibition organizer. The petitioner has not established that her Certificate of Excellence is nationally or internationally recognized in the field of endeavor or that it constitutes a prize or an award (such as the Grand Prize).

The petitioner submitted a June 9, 2006 letter from the International Museum of Contemporary Masters of Fine Art, San Antonio, Texas, stating that she received a Salon International 2006 "Jury's Top 50" honor. The petitioner also submitted her Salon International 2006 "Jury's Top 50" certificate, "Jury's Top 50" ribbon, "Honorable Mention" certificate, and "Honorable Mention" ribbon. There is no evidence demonstrating that the petitioner's honors from Salon International 2006 had a significant level of recognition beyond the exhibition organizer. The petitioner has not established that the preceding honors are nationally or internationally recognized in the field of endeavor. Further, we cannot conclude that earning an honorable mention and placing in the top fifty constitutes her receipt of "prizes or awards."

The petitioner submitted a March 13, 2006 letter stating that her painting entitled "The Beauty of a Woman" received a "Juror's Honorable Mention" at the Palm Beach Community College's Second Annual National Painting, Drawing and Printmaking Competition. The petitioner also submitted an April 24, 2006 letter reflecting that various forms of recognition were conferred such as Best in Show, Excellence Award, Merit Awards (2), Honorable Mentions (2), and Juror's Honorable Mentions (3). The petitioner was among the three individuals who received Juror's Honorable Mentions. There is no evidence demonstrating that the petitioner's Juror's Honorable Mention had a significant level of recognition beyond the competition organizer. The petitioner has not established that her Juror's Honorable Mention by the Palm Beach Community College is nationally or internationally recognized in the field of endeavor or that it constitutes a prize or an award (such as the Best in Show).

The petitioner submitted an unsigned letter from the North Valley Art League, Redding, California, stating that her painting received an Award of Excellence at the North Valley Art League's 22nd Annual National Show.⁶ The petitioner also submitted an "Award Winners" sheet reflecting that one award was conferred for Best of Show (\$1,000), five awards were conferred for Excellence (\$100), and

⁶ "North Valley Art League is a non-profit organization dedicated to the support of local artists, and the promotion and sale of art in the California North State." See http://www.nval.org/Home_Page.html, accessed on June 3, 2009, copy incorporated into the record of proceeding.

five awards were conferred for Merit (\$50). The petitioner was among the five individuals who received an Award of Excellence of \$100. There is no evidence demonstrating that the petitioner's award from the North Valley Art League had a significant level of recognition beyond the show organizer and Northern California. The petitioner has not established that her award is tantamount to a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted a September 22, 2005 letter from the Art Center of Estes Park, Colorado, stating that her painting "Heurr" won 1st Place Oil Category in the Art Center of Estes Park's 'Lines into Shapes' show and sale." The petitioner also submitted a document entitled "9th Annual Lines into Shapes National Art Show and Sale ARTIST AWARDS" reflecting that various forms of recognition were conferred such as Best of Show (\$750), Mayor's Award (\$500), People's Choice Award (\$500), Juror's Awards (two of \$300), Founders Awards (two), 1st Place Awards (ten of \$300), and Honorable Mentions (seven). The petitioner was among the ten individuals who received 1st Place Awards of \$300. There is no evidence demonstrating that the petitioner's award from the Art Center of Estes Park had a significant level of recognition beyond the show organizer or the State of Colorado. The petitioner has not established that her award is tantamount to a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted a September 10, 2005 letter from the Northern National Art Competition, Rhinelander, Wisconsin, stating that her painting won a \$200 Donor Award at the eighteenth Northern National Art Competition. The petitioner also submitted her Donor Award ribbon and an awards sheet reflecting that various forms of recognition were conferred such as Awards of Excellence (three of \$1,000), Special Merit Awards (two of \$500), Benefactor Awards (one of \$275 and five of \$250), Donor Awards (three of \$200, two of \$150, and six of \$125), Patron Awards (two of \$125 and five of \$100), Contributor Awards (two of \$100), Audience Choice Award (one of \$100), and Nicolet College Purchase Award (one of \$300). The petitioner was among the eleven individuals who received a Donor Award. There is no evidence demonstrating that the petitioner's award from the Northern National Art Competition had a significant level of recognition beyond the competition organizer and the northern region of the United States. The petitioner has not established that her award is tantamount to a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted a May 26, 2005 letter from the Academy of Art University, San Francisco, congratulating her for "excellent work" in the School of Illustration's Annual Spring Show and stating that she would be mailed a check for \$200. The petitioner also submitted a certificate stating: "School of Illustration, Academy of Art University, MFA [Master of Fine Arts] Painting, [the petitioner], Spring Show 2005."⁷ The petitioner's initial submission also included a September 22, 2004 letter from the Academy of Art University congratulating her for "the award [she] received at the Spring Show" and a certificate stating: "School of Illustration, Academy of Art University, MFA Drawing, [the petitioner], Spring Show 2004." The preceding student awards from the petitioner's alma mater reflect institutional recognition rather than national or international recognition. Further, we cannot conclude that an award limited by its terms to arts students is an

⁷ The petitioner received a Master of Fine Arts degree from the Academy of Art University in May 2006.

indication that the recipient “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 submitted a Certificate of Merit and a June 22, 2005 letter from the Society of Illustrators of Los Angeles indicating that her work “was accepted for inclusion into the Illustration West 43 competition.” The letter informs the petitioner that “the student call for entries” for Illustration West 44 “will be posted soon.” There is no documentation showing whether the petitioner participated in the student competition or the regular competition. Nevertheless, the petitioner has not submitted evidence establishing that her Certificate of Merit is a nationally or internationally recognized prize or award for excellence in the field of endeavor rather than simply an acknowledgment of her selection to participate in the competition.

The petitioner submitted a July 24, 2006 letter from the Executive Editor of *The Artist’s Magazine* stating that her artwork was “selected as a finalist in the Portrait & Figure category of the 21st Annual *Artist’s Magazine’s* Art Competition.” The petitioner also submitted a certificate acknowledging her selection as a finalist and information from the magazine’s internet site reflecting that dozens of finalists were selected in the “Portrait” category. While it is certainly an honor to be selected as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of “nationally or internationally recognized prizes or awards.” In this instance, there is no evidence from the competition’s organizers showing that the petitioner received a prize or award.

The petitioner’s “Exhibit Index” submitted with the petition also claimed the following at exhibit D-23: “*A Finalist Winner and TBA award, 2007 International Exhibition of the Society of Master Impressionists.*” The record, however, does not include evidence of the petitioner’s qualification as a finalist or her award. As discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). **The record does not include evidence demonstrating that the petitioner actually received a prize or award at the 2007 International Exhibition of the Society of Master Impressionists.**

On appeal, the petitioner provides a table listing several of the preceding awards and her percentage ranking based on the number of entries. For example, with regard to the 20th Annual Northern National Art Competition, the table prepared by the petitioner indicates that her Donor Award gave her a ranking in the “Top 1.0%” of 277 competitive entrants. The record does not support the petitioner’s statistical conclusion. We cannot ignore that a total of 33 individuals received awards out of 277 entrants. Thus, approximately 12 percent of the artists who participated in the competition received awards. The petitioner’s percentage ranking calculation is not an appropriate representation because it does not take into consideration the number of recipients in the other award categories. Further, we cannot ignore that twelve other artists earned monetary awards in excess of the petitioner’s \$200 Donor Award (such as the three \$1,000 Award of Excellence winners). The

petitioner's percentage calculations do not include such artists whose monetary awards far exceeded her amount. Further, as previously noted, the petitioner's award from the preceding competition reflects regional recognition rather than the national or international recognition required by this criterion.

In light of the above, the petitioner has not established that she 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 submitted a letter from the OPA thanking her for her "recent renewal and payment for the 2007 membership dues." The petitioner also submitted her 2007 membership card from the OPA reflecting her "Associate" membership designation. With regard to the OPA's membership designations, the letter from the OPA states:

All members begin as an Associate. Once an Associate has been juried into three national exhibitions, he/she may apply for consideration as a Signature member. An application and illustrations of the artist's work will be evaluated along with other applicants to determine if he/she has demonstrated exceptional merit. The Signature member process is a competitive process and is not automatic.

The highest membership level is that of Master Signature member. This status is only available to members who have previously been awarded Signature member classification. In addition they must provide evidence of having achieved the very highest level of artistic achievement. Master Signature member status is awarded on a very limited basis.

There is no evidence showing that the petitioner's "Associate" member designation required outstanding achievements. According to the preceding information, the petitioner's "Associate" designation in the OPA is by far the least restrictive of the organization's three membership classifications. We cannot conclude that the petitioner's level of membership in the OPA is an indication that she "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). Rather, the petitioner's "Associate" classification is an entry-level designation. As discussed, the petitioner seeks a highly restrictive visa classification, intended

for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner submitted evidence of her membership in the PSA, the California Art Club (CAC) (“Patron” designation), and the NOAPS. The petitioner also submitted general information about the preceding organizations, the Shipyard Trust for the Arts (STA), and the Society of Master Impressionists (SMI). The record, however, does not include evidence of the petitioner’s membership credentials for the STA and the SMI. As discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence (such as membership bylaws or official admission requirements) showing that the PSA, the CAC, the NOAPS, the STA, and the SMI require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field or an allied one. Accordingly, the petitioner has not established that she meets this criterion.

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

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. 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.⁸

The petitioner submitted a brief announcement in the February 2007 issue of *American Artist* identifying the winners of the NOAPS “Best of America” annual exhibition. The two-sentence announcement identified the petitioner and three other artists whose paintings received awards. This material was primarily about the competition rather than the petitioner and her art work. Further, the author of the material was not identified as required by the plain language of this regulatory criterion. Finally, there is no evidence (such as circulation statistics) showing that this publication qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an excerpt from the book *100 Ways to Paint People and Figures, Volume 2*, which contains paintings and information from 100 artists. Page 64 includes a painting by the petitioner

⁸ 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.

and a self-written didactic explanation regarding her artwork. There is no evidence showing that the petitioner was singled out for discussion or further mentioned in *100 Ways to Paint People and Figures*. The plain language of this regulatory criterion requires that the published material be “about the alien” rather than written by the alien. The petitioner has not established that this book, or any significant portion of it, is about her. Further, there is no evidence showing that this book qualifies as a professional or major trade publication or some other form of major media. For example, there is no evidence showing that the book had substantial national or international readership, that the book had significantly higher sales relative to other national art publications, or that the book was otherwise circulated in a manner such that publication in the book would be consistent with sustained national or international acclaim.

In response to the director’s request for evidence, the petitioner submitted general information from the internet sites of *American Artist* and *International Artist*, the publisher of *100 Ways to Paint People and Figures, Volume 2*. The self-serving nature of the material posted on the preceding magazines’ internet sites is not sufficient to demonstrate that *American Artist* and the book *100 Ways to Paint People and Figures, Volume 2* qualify as major art publications. On appeal, the petitioner submits “Bestsellers in Magazines” printouts from Amazon.com’s internet site reflecting that *American Artist* ranked seventh in the “painting” category and ninth in the “art” category. While these rankings may reflect online sales through Amazon.com, the record lacks quantitative circulation figures showing the publication’s overall distribution, or other evidence of the publication’s stature.

The petitioner submitted an October 7, 2006 article about her in the “U.S. Edition” of *JoongAng Daily* entitled “Want to Contribute to the Society through Art.” On appeal, the petitioner submits circulation information for *JoongAng Daily* in Korea rather than its U.S. Edition. There is no evidence showing that the U.S. version of this newspaper qualifies as a professional or major trade publication or some other form of major media. Further, the author of the article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted page 15 from the NOAPS Society’s “A Tradition of Excellence, Exhibit 2006” program. Page 15 includes the petitioner’s painting “Tiffany” along with the works of three other artists. The names of the paintings and the artists, their places of residence, and the prices of their work are listed, but there is no discussion about the petitioner or her work. The plain language of this regulatory criterion requires published material “about the alien . . . relating to the alien’s work” including the “author” of the material. The preceding evidence does not meet these requirements. The petitioner has not established that this exhibit program, or any significant portion of it, is about her. Further, there is no evidence showing that this exhibit program qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted page 11 from the PSA’s second quarter 2006 newsletter *The Art of the Portrait*. Page 11 includes the petitioner’s painting along with the works of seven other artists. The names of the artists and their states of residence are listed, but there is no discussion about the petitioner or her work. Further, there is no evidence showing that this newsletter qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted promotional material and art catalogs from the Salon International 2006 exhibition at the Greenhouse Gallery of Fine Art and the Fifteenth Annual National Juried Exhibition of Traditional Oils at the Dana Gallery. The petitioner's paintings appear in the catalogs along with those of numerous other artists, but there is no discussion about her or her work. The plain language of this regulatory criterion requires published material "about the alien . . . relating to the alien's work" including the "author" of the material. The preceding evidence does not meet these requirements. Further, there is no evidence showing that the preceding art gallery catalogs qualify as professional or major trade publications or some other form of major media.

The petitioner submitted an extensive listing in the December 2004 issue of *The Artist's Magazine* naming her among the hundreds of finalists for the 21st Annual *Artist's Magazine's* Art Competition, but there is no discussion about her and her artwork. On appeal, the petitioner submits "Bestsellers in Magazines" printouts from Amazon.com's internet site reflecting that *The Artist's Magazine* ranked first in the "painting" category and second in the "art" category. While these rankings may reflect online sales through Amazon.com, the record lacks quantitative circulation figures showing the publication's overall distribution.

The petitioner submitted pages from the New York Society of Illustrators' Annual Scholarship Competition program catalog, the Hilton Head Art League 2006 National Juried Show catalog, and the North Valley Art League 22nd Annual National Juried Art Show 2006 catalog. The petitioner's name and paintings are identified in these catalogs, but there is no discussion about her and her artwork. The plain language of this regulatory criterion requires published material "about the alien" including the "author" of the material. The preceding evidence does not meet these requirements. Further, there is no evidence showing that the preceding catalogs qualify as professional or major trade publications or some other form of major media.

The petitioner submitted the Baker Arts Center's First Quarter 2006 newsletter listing her among the dozens of artists whose works were selected for the Baker Arts Center's 9th Annual National Juried Art Show, but there is no discussion about her and her artwork. Further, there is no evidence showing that this newsletter qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article about her in the Sharon Art Studio Spring 2007 newsletter,⁹ but there is no evidence showing that this newsletter qualifies as a professional or major trade publication or some other form of major media.

In response to the director's request for evidence, the petitioner submitted an article about her in the November 7, 2007 issue of *The Korea Times*. This article was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence showing that this newspaper qualifies as a professional or major trade publication or some other form of major media

⁹ Sharon Art Studio employs the petitioner as an instructor.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The 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 involving professional artists is of far greater probative value than judging a local competition involving students.

In a June 6, 2007 letter accompanying the petition, previous counsel states that the petitioner has judged and critiqued her students while working as a part-time instructor at the Academy of Art University. The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that evaluating students, who have not yet begun working in the field, meets this requirement. Further, while an art instructor does evaluate the work of his or her pupils, this evaluation process is inherent to the position. Without evidence showing, for example, that the petitioner’s activities involved judging experienced professionals in national level competition or were otherwise consistent with sustained national or international acclaim in her field, we cannot conclude that she meets this criterion.

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

We acknowledge the petitioner’s submission of several reference letters praising her talent as a painter and discussing the exhibition of her work. Artistic talent and positioning one’s artwork for sale, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted her field.

[REDACTED], Loretta Goodwin Gallery, Birmingham, Alabama, states:

[The petitioner] showed great artistic potential during her MFA degree program, and by the time she graduated, she quickly emerged to the top of young artists specializing in drawing

and oil painting of landscapes and portraits. Her ability to apply her own, contemporary skills to masters' tradition of various media including oil, charcoal, and pastel is impressive to say the least, and it clearly distinguishes her from most artists in her field.

The Loretta Goodwin Gallery has successfully been doing business with [the petitioner] since last year. Every painting from her initial batch was sold immediately except for one. They not only sold quickly, but at competitive prices. We currently await her next series of paintings for which we have great expectations. Our gallery values [the petitioner] as a represented artist.

Instructor of Graduate Studies in Fine Art, Academy of Art University, states:

[The petitioner] is one of those few exceptional individuals in the art world. With her artistic talent, self-motivation, and diligence, she started to show great potential well before she received her MFA degree at Academy of Art University in San Francisco, one of the most famous art schools in the United States. She is a rare talent, combining artistic and aesthetic insight as well as outstanding technique. Her works that I have seen vary from beautiful compositions of female figures to unique observations of the lay of light upon background atmosphere. Her sensitivity to color is constantly refined, and it has been most recently noted in her figurative paintings, which I think are her most exceptional and provocative work yet.

May 2, 2007 letter states:

[The petitioner] is a talented young artist devoted to the creation of fine art. Her representational paintings adapt contemporary techniques, while keeping the tradition of classical oil paintings. Based on her firm fundamental skills, she has refined her artistic ability during her MFA degree program at the Academy of Art University. She has emerged as an artist with great potential.

Instructor of Graduate Studies in Fine Art Painting, Academy of Art University, states:

I have been a mentor and also a friend of [the petitioner] for many years.

[The petitioner] graduated from Academy of Art University with an MFA in Fine Arts Painting on 2006, and she was invited by the Academy of Art University to be an instructor shortly after her graduation. During her degree program and afterwards, she has made a significant contribution to the art world and the community. She is an artist with unusually strong fundamentals, and her skills for drawing and painting are exceptional to say the least. She is a diligent, highly experienced fine artist who effectively integrates her personal experience with art theory to create innovative and exciting pieces.

asserts that the petitioner "has made a significant contribution to the art world and the community," but he does not specify her original contributions or discuss their impact in her field.

Graduate Academic Advisor, Academy of Art University, states:

It has been a joy to know and work with [the petitioner]. She has been a committed student. She is an artist who is focused and always strives to learn and go forward with her work. She has accomplished so much in just a few years. She has a huge body of work and has had a good deal of teaching experience. [The petitioner] has always been conscientious, and always carries through with what she undertakes.

Owner and Curator, Studio Gallery, San Francisco, California, states:

We met [the petitioner] in the fall of 2005 through her graduate school instructor, Tae Park, who is the best-known and most successful painter at our gallery. Tae arranged for us to meet her "best students," including [the petitioner]. We set up a portfolio review and were immediately impressed with the quality and range of [the petitioner's] oil paintings. We realized that we had met a very talented artist and arranged with her to complete a number of paintings especially for a large show that we mounted in November, 2005. The show, called "tiny," featured small works. We highlighted [the petitioner's] work in our window display for the show, something we would normally reserve for an artist with a track record with the gallery. Our clients were just as thrilled with [the petitioner's] work as we were: she sold two paintings on the very first day of the show, even before the opening reception.

[The petitioner] sold a total of 9 paintings in that first show, which was the start of a very successful relationship between [the petitioner] and our gallery, a relationship that continues to grow. We have sold dozens of her paintings, including cityscapes, landscapes, figurative pieces and still lifes. She has participated in ten shows here at the gallery, and we have developed a strong following for her work among our clients.

* * *

[The petitioner] demonstrates a unique skill at depicting everyday objects in a delicate way that encourages and assists the viewer to see their often-overlooked beauty. She is especially adept at wine country landscapes, which are popular with our urban customers as a reminder of quieter time spent outside the city. While her work is clearly in the Bay Area realist tradition, [the petitioner] has a strong eye for both shape and composition that clearly makes her work stand out in a crowded field.

Director, Foundations Department, Academy of Art University, states:

In my capacity as director of the freshman curriculum, I look for exceptionally skilled artists to work with our students. [The petitioner] is such an artist.

Her contributions to the Foundations department have been impressive. Within her first year of teaching, she received the highest rating in our department classroom observation

program. Her student reviews have been among the best in the department and the artwork emerging from her classes rivals that of our most experienced instructors. It takes an exceptionally skilled artist to produce excellence in students; [the petitioner's] achievements in this area have been noteworthy.

* * *

[The petitioner] is an artist with great talent and potential

With regard to the preceding witnesses' comments that the petitioner shows great potential, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 45, 49. As discussed, the petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2). Further, several of the preceding individuals also mention the petitioner's awards at juried art exhibitions. These awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

[REDACTED], Executive Director, Friends of Sharon Art Studio, San Francisco, California, states:

[The petitioner] has served as an instructor at the Sharon Art Studio since 2006. The selection process for our instructors is a tough one, including an extensive portfolio review by our faculty and myself. Our program has limited room to offer new classes from new instructors, but [the petitioner's] work was so utterly impressive to me, I had to have her offer a class through our organization. Her classes and workshops always receive very good reviews and feedback by her students, who submit a class evaluation to me at the completion of their class.

Previous counsel argued that the petitioner has made original contributions through her painting teaching, publishing, and exhibitions. The petitioner's exhibitions and publications are addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii) and (vii). The record does not establish that the petitioner's exhibitions and publications have made original contributions of major significance to her field. Regarding the petitioner's work as a part-time art instructor at the Academy of Art University and the Sharon Art Studio, there is nothing in the reference letters to demonstrate that she has developed original painting techniques, as opposed to methodologies passed down from her own tutelage in various art classes. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in her field. The record does not indicate that the petitioner has introduced any new techniques, methodologies, styles, or made other pedagogical contributions that have been recognized and adopted by others or otherwise significantly impacted her field.

The preceding letters do not specify exactly what the petitioner's original artistic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in her 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 artwork has earned the admiration of the faculty at Academy of Art University and her art dealers, there is nothing to demonstrate that her work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other artists nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

On appeal, the petitioner argues the preceding letters were "written in an objective point of view" and that her witnesses "would not risk damaging their credibility as artistic experts by writing biased, or false statements." The director, however, did not question the truthfulness and credibility of the witnesses' comments and their opinions regarding the petitioner. The director specifically noted that the witnesses' statements provided "useful contextual information," but found that they were unsupported by "independent, verifiable evidence" demonstrating that the petitioner's original artistic contributions were of major significance in her field. In this case, the letters of recommendation, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an artist who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she 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.

As discussed, the petitioner submitted an excerpt from the book *100 Ways to Paint People and Figures, Volume 2*, which contains paintings and information from 100 artists. Page 64 includes a painting by the petitioner and a self-written didactic explanation regarding her artwork. We cannot conclude that the eleven-sentence instructional piece on page 64 constitutes a "scholarly" article in the field. Further, there is no evidence showing that *Ways to Paint People and Figures* is a professional or major trade publication or some other form of major media. Accordingly, the petitioner has not established that she meets this criterion.

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

We withdraw the director's finding for this regulatory criterion. The petitioner submitted evidence showing that her artwork was accepted by several national juried exhibitions and documentation demonstrating the significance of those exhibitions. The petitioner also submitted evidence showing that her paintings were formally recognized by the events' organizers and briefly mentioned in national art media. Accordingly, the petitioner has established that she meets this regulatory criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must 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.

The petitioner submitted a May 29, 2007 letter from Academy of Art University stating that she has worked there as an instructor "an average of 7 hours per week" since January 30, 2006. The petitioner also submitted an April 9, 2008 letter stating that she has served as an instructor at the Sharon Art Studio since 2006. There is no supporting evidence showing that these organizations have a distinguished national reputation. With regard to the petitioner's part-time instructor positions, there is no evidence from her superiors demonstrating that her role was leading or critical. For example, there is no evidence demonstrating how the petitioner's role differentiated her from the other instructors, art studio employees, or university faculty. The documentation submitted by the petitioner does not establish that she was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that she meets this criterion.

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

The petitioner submitted documentation regarding the pricing, consignment and sale of her art work. The petitioner also submitted a May 29, 2007 letter from Academy of Art University stating that she has worked there as an instructor since January 30, 2006 "at an hourly rate of \$30.00." The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we find that the petitioner meets only a single regulatory criterion, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). We concur with the director's finding that

the petitioner has failed to demonstrate her receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Previous counsel argued that the petitioner's educational qualifications, job experience, instructor positions, exhibition awards, memberships, and comments from her witnesses are comparable evidence of her extraordinary ability as an artist. 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.

Nevertheless, aside from the petitioner's educational qualifications and job experience, the petitioner's instructor positions, exhibition awards, memberships, and reference letters have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), (vii) and (viii). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim. For example, with regard to the petitioner's educational qualifications and job experience, the petitioner has not established that they elevate her to the very top of her field. Regarding the reference letters, while such 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 extensive 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). 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 opinion statements from individuals selected by the petitioner.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 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.