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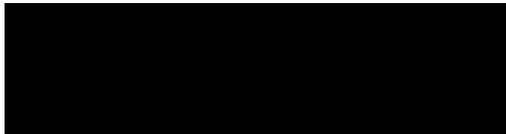
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: LIN 07 062 51570 Office: NEBRASKA SERVICE CENTER Date: JUL 08 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:

SELF-REPRESENTED

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).

JF
WDeadnick
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 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 he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that his awards are indicative of *national and international* achievements and that his country has a distinguished reputation for its folk songs and folk dances.

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 December 26, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a dancer and a choreographer. 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.

The petitioner submitted the following:

1. Certificate stating: "The Judge of the Republican Festival 'BRAVO 2004' for Young Performer of Folk and Variety Art Awards Choreographic Ensemble 'IALONI' with the title of laureate and the medal, Choreographer: [the petitioner];"
2. Diploma from the "Regional Board of Imereti, Lechkhumi, Kvemo Svaneti Choreographic Art Workers of Georgia" stating: "Georgian Song and Dance Ensemble 'Kutaisi' Awards Choreographic Ensemble 'IBERI' at New Martyrs Kutaisi Orthodox School for successful performance in Samson (Jajuli) Doganadze Georgian Folk Dance Competition;"
3. Participant's Diploma from the "National Union of Georgian Choreographic Art Workers World International Folklore Federation 'SIOPH'" awarded to "the Ensemble 'IALONI' at Tskhaltubo House of Young Technicians and Creators with I Prize and the Title of Laureate" (2001);
4. Diploma from the "Kutaisi Local Government" awarded to the petitioner in connection with the 25th anniversary of "Georgian Song and Dance State Ensemble 'Kutaisi' for popularization of Georgian Folk Song and Dance, active participation in the Cultural Life of the City and Republic" (December 29, 2004);
5. Certificate from the "Chairperson of Kharkov community" and the "Director and Choreographer of Folk Dance Theatre 'Zapatov'" stating that the Georgian State Song and Dance Ensemble "Kutaisi" was awarded "the Medal of Kharkov Folk Dance Theatre 'Zapatov' for performing interesting creative programs for the citizens of Kharkov;"
6. Diploma from the "Golden Fleece Poti-2006 Children's II International Folk Festival of Black Sea Basin Countries" stating that the petitioner was "awarded with the Golden Medal and the Title of Laureate of the Festival;"

7. Diploma from the President of the Kharkov Regional Organization, President of the Georgian Regional Charity Community “Metekhi,” and the Head of the Civil Department of the Kharkov Town Council “awarded to [the petitioner] for successful participation in the Concert devoted to the Year of Georgia in the Ukraine;”
8. Diploma presented to the “Choreographic Ensemble ‘Iaoloni’ at Tskaltubo Young Technician and Creative Worker’s House . . . for participating in gala concert devoted to 100 years anniversary of Iliko Sukhishvili, founder of Georgian State Dance Ensemble” (2007);¹
9. Diploma awarded to the Kutaisi Choreographic Ensemble “Iberia” at the Folklore Festival “Okros Martve – 2007;”² and
10. Diploma awarded to the “Ensemble ‘Ialoni’ (Tskhaltubo)” by the Adjarian Music Society and the Batumi Centre of Culture and Tourism “Egrisi” at the “Children’s Republican Festival Dolphin – 2008.”³

Items 2, 4, 5, and 7 reflect local or regional recognition rather than national or international recognition. With regard to items 1 through 10, the record does not include supporting evidence demonstrating the significance and magnitude of the festivals in which the petitioner received the preceding diplomas and certificates, many of which simply acknowledge his participation rather than indicating his receipt of an actual prize or award. 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. In this case, there is no evidence showing that petitioner’s diplomas and certificates had a significant level of recognition beyond the events, festivals, and concerts where they were presented. Further, with regard to awards won by the petitioner or his pupils at youth events, we do not find that such awards demonstrate that he “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 or his dance ensembles faced competition from throughout their field, rather than being limited to their approximate age group or skill level within that field. 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 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁴

¹ The diploma identifies the petitioner as a choreographer for the Tskaltubo Young Technician and Creative Worker’s House.

² The diploma identifies the petitioner as a choreographer for the Kutaisi Choreographic Ensemble.

³ The diploma identifies the petitioner as “Chief Choreographer” for the “Ensemble ‘Ialoni’ (Tskhaltubo).”

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.

Likewise, it does not follow that a dancer or choreographer who has received recognition at youth events should necessarily 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 submitted items 8, 9, and 10 in response to the director’s request for evidence. These three diplomas were issued 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 the petitioner’s diplomas from 2007 and 2008 in this proceeding. Nevertheless, there is no evidence showing that these diplomas are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

We cannot ignore that items 8, 9, and 10 were allegedly issued to the petitioner in the country of Georgia in 2007 and 2008. However, according to “Labour Book” entries submitted by the petitioner, he was relieved of his position of choreographer at “Tskhaltubo Station of Young Technician and Creators” on August 31, 2006 and relieved of his post with the Georgian “Song and Dance Ensemble ‘Kutaisi’” on August 8, 2006. Further, according to the petitioner’s entry stamp in his passport, his Form I-140, Immigrant Petition for Alien Worker, and his Form I-485, Application to Register Permanent Residence or Adjust Status, his “Date of Last Arrival” in the United States was July 24, 2006. In addition, the petitioner’s Form G-325A, Biographic Information, and Form I-290B, Notice of Appeal or Motion, indicate that he has resided at [REDACTED] Brooklyn, New York since August 2006. There is no evidence establishing that the petitioner was present in Georgia with the Tskhaltubo and Kutaisi ensembles in 2007 and 2008. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The petitioner submitted an October 26, 2006 letter from the Art Manager and Director of the Georgian Song and Dance Ensemble “Kutaisi” stating: “The fact that the Ensemble ‘Kutaisi’ is a grand-prix holder of Palma-de-Maliorka [sic] (Spain) and Agrijentino [sic] (Italy) is his great desert.” On appeal, the petitioner asserts that the preceding letter demonstrates that he and his ensemble “earned grand prizes at Festival Palma de Mallorca and Agrigento, Italy.” There is no evidence from the competitions’ organizers showing that the petitioner received a prize or an award at these festivals. Rather than submitting primary evidence of his receipt of a prize from the festival organizers, the petitioner instead submitted an October 26, 2006 letter from the unidentified Art Manager and Director of the Georgian Song and Dance Ensemble “Kutaisi” stating that the

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.

ensemble is the prize holder. 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 substantive evidence demonstrating that the petitioner himself actually received a prize or award at the aforementioned festivals.

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, a 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.

In response to the director's request for evidence, the petitioner submitted a March 4, 2008 letter from [REDACTED] Chairman of Imeriti, Racha, Lechkumi, Svaneti Regional Organization of Georgian Choreography Association, stating that the petitioner is a member of the association. The record, however, does not include evidence (such as membership bylaws or official admission requirements) showing the admission requirements for this association. There is no evidence showing that the preceding association requires outstanding achievements of its 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 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. 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.⁵

The petitioner submitted an article in *News of Art* entitled "Tours in Spain." In response to the director's request for evidence, the petitioner submitted an article in *Kamertoni* entitled "The members of the Ensemble 'Ialoni' dream to dance on the great stage of the worldwide," but this article only mentions the petitioner in passing. The plain language of this regulatory criterion, however, requires that the published material be "about the alien." The petitioner's response also included an article in *Tskhaltubo* entitled "Virtuoso Dancer and Choreographer." The dates and authors of the preceding three articles were not identified as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that the preceding publications qualify as professional or major trade publications or some other form of major media. Accordingly, 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 March 4, 2008 letter from [REDACTED] Chairman of Imeriti, Racha, Lechkhumi, Svaneti Regional Organization of Georgian Choreography Association, states: "[The petitioner] was a judge of many kind of festivals. He always performed his duties honestly." Rather than submitting evidence from the festival organizers confirming his participation as a judge, the petitioner instead submitted a letter from [REDACTED] briefly attesting to his involvement. As previously indicated, 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. 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). In this instance, there is insufficient documentary evidence demonstrating that the petitioner has participated as a judge of the work of others at dance festivals. For example, there is no evidence showing the specific events judged by the petitioner, his dates of participation, the names of the individuals he evaluated, their level of expertise, or documentation of his assessments. Without evidence showing, for instance, that the petitioner's activities involved evaluating experienced professional dancers at the national or international level or were otherwise consistent with national or international acclaim, we cannot conclude that he meets this criterion.

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

We acknowledge the petitioner's submission of reference letters from various individuals praising his talents as a dancer and a choreographer and discussing his activities. Talent and activity in one's

⁵ 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.

field, however, are not necessarily indicative of original artistic contributions of major significance. Several of the reference letters mention the petitioner's receipt of prizes and awards, but this evidence has 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. In this case, the record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

With regard to the petitioner's dancing and choreography achievements, the reference letters do not specify exactly what his original contributions in folk dancing have been, nor is there an explanation indicating how any such contributions were of major significance in his 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 may have helped various youth dancers improve their dancing skills, the documentation submitted by him does not establish that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other folk dancers and choreographers nationally or internationally, nor does it show that the field has somehow changed as a result of his work so as to demonstrate the petitioner's significant contribution to his field.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 that one would expect of a dancer or a choreographer who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Evidence 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 him. 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 an October 26, 2006 letter from the Director of the Station of Young Technicians and Creators of Tskhaltubo stating:

[The petitioner] . . . worked at the Station of Young Technicians and Creators as a choreographer in 2000-2006. In the period of working at the station [the petitioner] showed himself as a hardworking, energetic and professional person. [The petitioner] played a great role in foundation and successful development of the Folk Ensemble 'Iaaloni' at the Station of Young Technicians and Creators.

The record, however, does not include evidence showing that this organization has a distinguished reputation. Further, the record lacks evidence demonstrating the leading or critical nature of the petitioner's role for the organization. For example, there is no evidence demonstrating how the petitioner's role differentiated him from the other choreographers on the staff, let alone the organization's artistic management (such as the director).

The October 26, 2006 letter from the Art Manager and Director of the Georgian Song and Dance Ensemble "Kutaisi" states:

[F]rom 1996 to 2006 August [the petitioner] worked in Georgian Song and Dance Ensemble "Kutaisi" as an actor-dancer. He successfully traveled in many countries as are: 2001-2002 – Greece, 2002 – Spain, 2003 Martiniki [sic] Islands – Spain – France, 2004 – Byelorussia, 2005 – Ukraine. [The petitioner] was distinguished as one of the best solo performer of Georgian Dances. The fact that the Ensemble 'Kutaisi' is a grand-prix holder of Palma-de-Maliorka [sic] (Spain) and Agrijentino [sic] (Italy) is his great desert. [The petitioner] was always distinguished with his wonderful discipline among staff members of the Ensemble.

The record, however, does not include evidence showing that this organization has a distinguished reputation. Further, the limited information in the preceding letter is not sufficient to demonstrate that the petitioner's role for the ensemble was leading or critical. The record lacks documentation showing the significance of the petitioner's solo performances. Nor is there evidence demonstrating how the petitioner's role differentiated him from the other members of the ensemble, let alone its artistic management. For example, there is no evidence showing that the petitioner's name frequently received top billing or that the popularity of the ensemble's productions increased when he was known to be performing.

With regard to the petitioner's roles as a dancer and a choreographer for the preceding organizations, there is no evidence showing that he was responsible for his ensembles' success or standing to a degree consistent with the meaning of "leading or critical role" and otherwise indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted evidence of various stage performances in which his ensembles participated. For example, the petitioner submitted event programs, correspondence, and digital video discs relating to his performances. This regulatory criterion calls for commercial successes in the form of “sales” or “receipts;” simply submitting evidence of the petitioner’s ensembles’ stage performances cannot meet the plain language of this regulatory criterion. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no evidence showing that the petitioner’s performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria 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).

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” In response to the director’s request for evidence, the petitioner submitted a “Letter of recommendation” from the Director and the Musical Head of the Rustem Galitch Poetry & Music Theater in New York. This letter states that the theater had “some years of mutual cooperation with the petitioner,” but it does not address his future employment with the theater. The content of the letter does not provide clear information indicating the means through which the petitioner will continue his work as a dancer or a choreographer in the United States. For example, the letter from the Director and the Musical Head of the theater does not specify the future events and locations where the petitioner will be performing. Without “clear evidence” in the form of a letter from a prospective employer, evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States, the petitioner has not established that he will continue to work in his area of expertise in the United States.

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. Nor is there clear evidence demonstrating that the petitioner will continue to work in his area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) 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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.