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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 28 2009
LIN 08 036 51791

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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 November 8, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a chemist.

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).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner.

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

The petitioner did not initially claim this criterion. However, in response to the director's Request For Evidence ("RFE"), the petitioner provided two first prize diplomas for the best presentation at the conference of Young Scientists of Armenian SSR in 1980 and in 1982. The petitioner also submitted internet pages from the National Foundation of Science and Advanced Technology's website indicating that he was awarded a short term travel grant for a conference in St. Louis, Missouri in June of 2005. This was accompanied by an email that indicated he was invited to present his paper regarding the electrochemical treatment of jewelry alloys at the conference. Two letters from the International Science and Technology Center, which confirmed that two separate grants were given to the petitioner for his research, were also submitted. The petitioner also provided an undated excerpt from *The Economic Journal*, entitled "Soviet Invention Awards," written by Francis Hughes, which explained that authorship certificates are awards for inventions which must possess utility. The excerpt was accompanied by a letter from the Yerevan Household Chemistry Plants, which indicated that the petitioner received an authorship certificate for developing a method for putty preparation and that he was also compensated for such award for three years before the fall of the Soviet Union.

The plain language of this regulatory criterion requires the petitioner's "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner failed to submit sufficient evidence to demonstrate that the awards given to the petitioner constitute nationally or internationally recognized prizes or awards. Without other documentation of an award such as evidence regarding its prestige, selection process or candidates that the petitioner was competing against, the petitioner failed to establish the national or international recognition of these awards.

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.

This criterion was not initially claimed. However, in response to the RFE, the petitioner provided an application dated 2008 for the American Chemical Society, which was filled out. No new evidence was provided on appeal, and this criterion was not claimed in the petitioner's appeal brief.

The director's decision found that the petitioner failed to provide evidence to establish the organization requires outstanding achievements for its members, as judged by recognized national or international experts in their fields. We agree with the director, finding also that the record lacks the evidence necessary to satisfy this criterion.

In order to demonstrate that membership in an association meets this criteria, 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, 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 record lacks evidence that the petitioner was a member of the American Chemical Society, as there was no confirmation that the petitioner's membership application was processed or even sent to the organization. Further, there is no evidence to establish that outstanding achievements are required for membership in this organization. For example, membership bylaws or official admission requirements for the American Chemical Society were not provided to demonstrate that it requires outstanding achievements of its members. The petitioner also failed to show that membership applications are judged by recognized national or international experts in the field. Moreover, the American Chemical Society application for 2008, which was submitted by the petitioner, postdates the filing of his petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner therefore failed to provide evidence of his membership prior to the filing of this petition.

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 regulation, 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.¹

The petitioner provided a letter from the producer of a movie entitled, "The Secret of Eternal Color," which indicated that the petitioner participated in this movie about the Armenian red dye "vordan Karmir." The petitioner also submitted an extract from an Armenological bibliography, *Bazmavep*, issued 1991, which mentions he was a junior researcher involved in the research of this Armenian red dye. The whole article was not provided. In addition, the translation had a stamp on it with a signature without an actual certification. An article entitled, "Revival of Vordan Karmir," issued in 1986, from *Sovetakan Hayastan* magazine was also submitted. This article also only included a stamp with a signature, without a certification.

In reference to the RFE, the petitioner submitted two excerpts from the Armenian Soviet Encyclopedia regarding the history of both the *Bazmavep* and *Sovetakan Hayastan* publications, dated 1976 and 1984 respectively. The most recent information provided regarding the *Bazmavep* indicated that it was published two to three times a year and included Armenian historical research works, philosophical articles, religious materials and the works of Soviet scientists. The excerpt on *Sovetakan Hayastan* established that it is a monthly publication and that it is delivered to 52 countries. An article that was not translated regarding the *Sovetakan Hayastan* was also provided. In the article, the number 29,200 was circled and the word "circulation" was written by hand next to it. In addition, a letter signed by the director and screenwriter of "The Secret of Eternal Color," dated August 15, 2008, was submitted explaining the film and the petitioner's role in it. The letter also stated that the film was broadcast by all the main television channels in Armenia and was purchased by a Los Angeles television channel. It also claimed that the film is still being broadcasted after six years of its initial screening. On appeal, no new evidence was submitted.

The director found that the petitioner failed to satisfy this criterion, and we concur with his decision. This criterion specifically requires that the evidence submitted contains a title, date, author and translation, if necessary. Of the two articles provided by the petitioner, the petitioner failed to submit the name of the author for the second article in *Sovetakan Hayastan*. In addition, neither article was accompanied by a certified translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The two articles submitted were only stamped in Armenian and initialed, presumably by the translator, thereby lacking the necessary certified translation.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The publication of photographs or the broadcast of television or films do not qualify the petitioner under this criterion. The specific regulatory requirements reference published written work instead of visual or audio work. As such, a television program or movie does not meet the plain language of this regulation, and cannot satisfy this criterion. Even if evidence of a movie in and of itself could be considered, the evidence regarding the petitioner's involvement on screen was limited to letters written by the producer, director and screenwriter and to one other article. In the RFE, the director asked for independent evidence including a transcript of the movie. However, this evidence was never provided. As such, the needed evidence to demonstrate the extent of the petitioner's role in the movie was not established.

Finally, there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. Many of the articles appear in regional papers rather than nationally or internationally circulated publications. Regional coverage or coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim. The information regarding the *Bazmavep* merely indicated that it was published two to three times a year, but did not include any circulation statistics to demonstrate whether such publication represented a professional or major trade publication or some other form of major media. Similarly, the excerpt regarding *Sovetakan Hayastan* stated that the publication was delivered to 52 countries. However, the excerpt did not indicate how many copies were distributed. Further, an article from an unknown source, which was not translated or certified as required by 8 C.F.R. § 103.2(b)(3), with the number 29,200 circled allegedly indicating its circulation, does not provide sufficient or reliable evidence. Moreover, as we noted above, movies are not considered for this criterion as movies are not "printed." However, even if they were, there was no independent evidence, only letters, to establish that the movie was played in some form of major media.

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), 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).

The petitioner submitted a certification from [REDACTED] the Editor-in-Chief of the Chemical Journal of Armenia ("AJC") confirming that he is a member of the editorial board of the AJC. In response to the RFE, the petitioner provided a subsequent letter from [REDACTED], referred to in the most recent letter as a consultant. This letter indicates that the minimum requirements for securing a slot on the editorial board include having more than 20 years experience, being nationally recognized as an individual of extraordinary ability and representing one of the small percentage who have reached the very top of his or her field. The petitioner also submitted a letter from a professor in the Chemistry Department at the University of Arizona, dated August 18, 2008. The professor, an elected member of the Academy of the Sciences in Armenia, provided background information regarding the AJC and also described the same criteria, as [REDACTED] which he claims is used in selecting board members. The professor additionally explained that the Editor-in-Chief normally nominates the candidates and the board then votes on new board members. The petitioner also provided two pages without any translation, presumably from an AJC article, which lists the petitioner's name as a member of the editorial board. On appeal, no new evidence was provided.

The director found that the petitioner failed to satisfy this criterion, and that he failed to comply with the RFE requesting specific additional information. For example, the RFE requested a complete list of the editorial staff and board members of the AJC, such as a copy of the journal. Although the petitioner provided two pages from the journal, he failed to provide a certified translation of them. Because the petitioner failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. In addition, the RFE requested official documentary evidence establishing the dates that the petitioner served on AJC's Editorial Board. This information was provided in response to the RFE in the letter from [REDACTED], who was no longer the Editor-in-Chief but rather a consultant for the AJC. As such, this letter would not represent independent evidence sufficient to confirm the petitioner's dates of service on the board.

Moreover, while information was provided on the petitioner's selection as a board member, it was very general and failed to specifically provide the requirements necessary to become a member of the editorial board. The only specific requirement listed as necessary to be nominated as a board member was a minimum requirement of 20 years experience. Other than this 20 year experience requirement, the language used in describing the requirements to be elected to the board mirrored the USCIS regulations mandating national recognition as an individual of extraordinary ability and requiring that the candidate represent one of the small percentage who have reached the very top of his or her field. While USCIS looks for these requirements, there is no evidence provided to demonstrate how the AJC determines what qualifies as national recognition or who has reached the top of his or her field. Further, the sources of the information provided regarding membership requirements were not independent documentary evidence, but rather the evidence came from two letters in response to the RFE.

Similarly, there was no evidence provided about the candidates for new board member slots that the petitioner evaluated as an editorial board member, such as their level of expertise. The record also

lacked documentation detailing the petitioner's assessments of these potential candidates, or the level of acclaim associated with judging the editorial board candidates. Without evidence showing, for example, that the petitioner's activities involved judging top scientists at the national level and that such a position as an editorial board member was otherwise consistent with sustained national or international acclaim, we cannot conclude that he meets this criterion.

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

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

The petitioner provided the following evidence to satisfy this criterion:

1. An authorship certificate for the petitioner's method of isolation of dye from cochineal;
2. An authorship certificate for the petitioner's invention of a method of obtaining red dye from cochineal;
3. An article in the *Biological Journal of Armenia* regarding Lawson Spectrophotometric Determination in Henna, issued in 1987, with no translation of the article;
4. An authorship certificate for the petitioner's invention of putty;
5. A patent for the petitioner's method of obtaining tannin;
6. An article in the *Chemical Journal of Armenia* regarding the separation of pigment from Armenian cochineal, issued in 1997, with no translation of the article;
7. An article in the *Chemical Journal of Armenia* regarding the analysis of dyes fraction from the Araratian cochineal; issued in 1997, with no translation of the article;
8. An article in the *Chemical Journal of Armenia* also regarding the analysis of dyes fraction from the Araratian cochineal; issued in 1997, with no translation of the article;
9. A patent for a method of separation of mixtures by column chromatography;
10. Another patent for a method of separation of mixtures by column chromatography;
11. A patent for a method of separation of mixtures by preparative thin-layer chromatography;
12. An article in English from *Chemical & Environmental Research*, dated 2001, which the petitioner co-authored;
13. An article in English from *Chemical & Environmental Research*, dated 2004, which the petitioner co-authored;
14. A presentation for the State Engineering University of Armenia entitled, "Enicolopov's Readings," dated 2003, with no translation;
15. An article in *Scientific Notes* magazine regarding the influence of the solvent composition on the quality of KTP crystals, dated 1999, with no translation of the article;
16. An article from the *Request for Inventions* catalogue, issued in 2001, regarding a method of electrochemical polishing, with no translation; and

17. An article from *Bnaget* magazine, issued in 2005 regarding teaching the unit of measurement of the substance amount in the 7th grade Chemistry course with no translation.

In addition, the petitioner provided various recommendation letters from colleagues and employees that were considered with regard to this criterion. In response to the RFE, the petitioner provided an undated excerpt from *The Economic Journal*, entitled "Soviet Invention Awards," written by [REDACTED]. This excerpt defined authorship certificates as awards for inventions possessing utility. A letter from the Yerevan Household Chemistry Plants was also submitted. The letter stated the petitioner received an authorship certificate for his method for putty preparation and that he was also compensated for such award for three years before the fall of the Soviet Union.

The director found that the petitioner failed to "provide objective documentary evidence which established that the petitioner's inventions have been widely recognized and adopted and that they have significantly impacted the field," and that he did not satisfy this criterion. We agree, finding also that the petitioner failed to demonstrate that he made a contribution of major significance to his field. The petitioner provided patents and authorship certificates, but failed to submit evidence that demonstrates the impact or significance of these inventions in his field. Moreover, the petitioner submitted many articles, which may have assisted in describing the petitioner's contributions. However, as most of the articles, including items 3, 6, 7, 8, 15, 16 and 17, were not translated, they did not provide any support for this criterion. Without translations, the actual content of the articles cannot be ascertained. See 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative and will not be accorded any weight in this proceeding.

As further documentation of the petitioner's claimed major contributions, the petitioner provided proof that he made a presentation at a scientific gathering. However, the petitioner similarly failed to provide a translation for such presentation (item 14) as required by 8 C.F.R. § 103.2(b)(3). Nonetheless, even if his presentation materials were provided with a translation in compliance with the regulations, the petitioner did not submit any evidence regarding the type of audience who attended his presentation, the number of attendees, or the selection criteria for the presenters. As such, the evidence does not demonstrate that the petitioner's participation in this conference required or illustrated his national or international acclaim or that his participation in the event was a contribution of major significance to his field.

With regard to the reference letters provided, we concede that reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence. However, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required"

for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances. Moreover, the letters are almost entirely from the petitioner's past employers, and no amount of testimony from the petitioner's own employers can objectively demonstrate that the research community throughout the nation or the world shares the employer's opinions regarding the petitioner's work.

As discussed above, the petitioner has failed to establish how his work has influenced his field and how it is considered to have been a contribution of major significance to his field. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted the following as evidence of his authorship:

1. An article in the *Biological Journal of Armenia* regarding Lawson Spectrophotometric Determination in Henna, issued in 1987, with no translation of the article;
2. An article in the *Chemical Journal of Armenia* regarding the separation of pigment from Armenian cochineal, issued in 1997, with no translation of the article;
3. An article in the *Chemical Journal of Armenia* regarding the analysis of dyes fraction from the Araratian cochineal; issued in 1997, with no translation of the article;
4. An article in the *Chemical Journal of Armenia* also regarding the analysis of dyes fraction from the Araratian cochineal; issued in 1997, with no translation of the article;
5. An article in English from *Chemical & Environmental Research*, dated 2001, which the petitioner co-authored;
6. An article in English from *Chemical & Environmental Research*, dated 2004, which the petitioner co-authored;
7. A presentation for the State Engineering University of Armenia entitled, "Enicolopov's Readings," dated 2003, with no translation;
8. An article in *Scientific Notes* magazine regarding the influence of the solvent composition on the quality of KTP crystals, dated 1999, with no translation of the article;
9. An article from the *Request for Inventions* catalogue, issued in 2001, regarding a method of electrochemical polishing, with no translation; and
10. An article from *Bnaget* magazine, issued in 2005 regarding teaching the unit of measurement of the substance amount in the 7th grade Chemistry course with no translation.

In his RFE, the director requested that the petitioner provide evidence that illustrates the nature and significance of the journals in which the petitioner's articles appeared, as well as documentary evidence establishing the significance of his articles, such as citations to the petitioner's articles. However, no new evidence was provided in response to the RFE or on appeal for this criterion. As such, the director found that the record "does not establish that the petitioner's works have been relied upon or cited to the extent that the impact of the articles is commensurate with a finding that

the petitioner has achieved sustained national or international acclaim in the field," and the director therefore decided that the petitioner failed to satisfy his eligibility for this criterion. We agree, and also find that the petitioner failed to provide evidence to show that his publications appeared in professional or major trade publications or other major media.

Moreover, the petitioner failed to provide translations for the articles contained in items 1, 2, 3, 4, 7, 8, 9 and 10. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the petitioner failed to submit certified translations for these items, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative.

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

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

The petitioner submitted a certificate from the Yerevan Artistic Watch Factory, dated June 2, 2006, stating that he founded the research laboratory at the factory and that he has been the head of the laboratory since then. Additionally, the certificate indicated that the petitioner has "played a decisive role in our foundry making and jewelry finishing." The petitioner also provided a certificate, purporting to be from the Armenian Branch of IGOR Trading Corporation, which indicated that he developed and applied various methods and technologies which improved production. This certificate was not on letterhead, and therefore the source of the certification is not clear.

In response to the RFE, the petitioner provided a few pages from the Armenian Soviet Encyclopedia, dated 1976, regarding the Yerevan Artistic Watch Factory. The excerpt from the encyclopedia provided a description of the business including stating its products are "imported to all USSR republics" and its circulation will reach 12.6 million in 1980. The petitioner also submitted a letter from the director of the Armenian Branch of IGOR Trading Corporation, which was not on letterhead. The letter stated that the petitioner played a leading role in setting up its casting department and provided examples of the many responsibilities held by the petitioner. The director of the Yerevan Artistic Watch Factory provided a letter which also stated that the petitioner played an important role in his company as the head of its laboratory and in its technology and innovation. Lastly, a letter from the chair of the Inorganic Chemistry Department at Yerevan State University, dated August 15, 2008, was provided. The letter stated that the petitioner played a critical role at Yerevan State University as an undergraduate and graduate advisor, a mentor to students and faculty, a teacher, a researcher and a member of various committees. On appeal, no new evidence was provided.

The director found that the petitioner failed to satisfy this criterion, and we agree. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. There is no

evidence demonstrating how the petitioner's role differentiated him from others in the university or in the two companies where he worked. We agree with the director that the petitioner has proven that he provided valuable services to his university and his two former employers. However, this criterion requires the petitioner to set himself apart from his peers and to also demonstrate how his leading or critical role was indicative of national or international acclaim. Further, the petitioner failed to provide any independent evidence from sources outside of his employers.

Moreover, the petitioner also failed to provide sufficient evidence that the two companies he worked for enjoyed distinguished reputations as compared to their competitors. The only evidence proffered, which was meant to substantiate the claim that Yerevan Artistic Watch Factory has a distinguished reputation, was an excerpt from an encyclopedia. However, the excerpt only provided a brief description of its business. While the encyclopedia indicated the watch factory's circulation, no basis for comparison was provided to show that these watches are more widely distributed than those from any other company. Further, even if the watches were widely circulated, there is no evidence to prove the watch factory has a distinguished reputation as a prestigious watch maker or the like. Moreover, while we agree with the director that Yerevan State University has a distinguished reputation in Armenia, we have not been provided any evidence that the petitioner performed in a leading or critical role at the university, or any evidence that the Chemistry Department, as a self-contained unit, has a distinguished reputation.

As such, the petitioner has not established that he 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 a certificate, claiming that it is from the Armenian Branch of IGOR Trading Corporation, which indicated his salary was "7200 USD while the average salary in the Armenian Branch is 2100 USD." The certificate was not on letterhead, and therefore the source of the certification is not clear. In addition, the petitioner submitted a certification from the Yerevan Artistic Watch Factory on letterhead that stated his salary was "6000 USD while the average salary for engineers in the Factory is 1800 USD." In response to the RFE, the petitioner provided a letter from the Armenian Branch of IGOR Trading Corporation confirming the salary information given in the above-referenced certificate that was accompanied by the petitioner's employee reports for 2004 and 2005. A letter was also submitted from the Yerevan Artistic Watch Factory which confirmed the previous salary information given and was also accompanied by two years of employee reports. However, the employee reports were not in English and were also not translated as required by 8 C.F.R. § 103.2(b)(3), and therefore the information contained in them cannot be evaluated. On appeal, no new evidence was provided.

The director found that the petitioner has failed to satisfy this requirement, and we concur. The petitioner failed to adequately respond to the RFE, which requested independent documentary evidence of the petitioner's salary and that his salary was significantly higher than others in his field. The independent evidence regarding the petitioner's salary, the employee reports, were not translated and their contents could not be assessed.

Moreover, the plain language of this regulatory criterion requires the petitioner to submit evidence that he has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. The petitioner provided letters that indicated his salary was higher than the "salary of engineers working in the company" and than the other "heads of departments." However, these letters are unclear as to whether the petitioner was being compared to other employees in his same field. Moreover, no evidence was submitted comparing the petitioner's salary to others in his field outside of his immediate employer. As such, there is no indication that the petitioner has earned a level of compensation that places him among the highest paid chemists in Armenia, the United States or any other country.

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

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

The petitioner initially submitted a certificate from Yerevan Household Chemistry Plant JSC, dated February 16, 2006, which stated that the petitioner invented the formula for Polyester Putty production and that his invention resulted in the corporation profiting \$150,000-200,000 per year during the period of 1988 through 1990. A certificate from the Yerevan Artistic Watch Factory, dated June 2, 2006, was also provided. The certificate claimed the petitioner authored the method for electrochemical polishing that resulted in a \$15,000-\$16,000 profit per year from 1998 through 2005 for the company. No new evidence was provided in response to the RFE or on appeal.

In his decision, the director found that the petitioner had not met this criterion. The director held that this criterion "pertains to the performing arts and does not readily apply to the claimed field of endeavor." We agree that the plain language of the criterion requires evidence of commercial success *in the performing arts*. And as no claim has been made that the petitioner's field involves the performing arts, the petitioner cannot satisfy this criterion.

The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. Accordingly, the petitioner failed to establish that he meets this criterion.

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

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.