

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

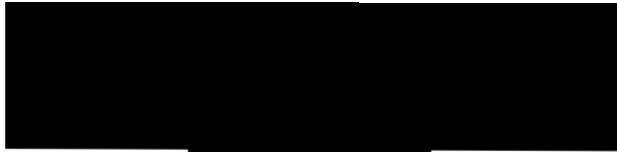
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B2



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 17 2009  
LIN 07 254 50224

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).

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 July 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a screenwriter and director.

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).

We note that although the record contains evidence of the petitioner's prior approval as an O-1 non-immigrant, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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

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 initially submitted two pages of what appears to be a pamphlet recognizing the Hartley-Merrill International Screenwriters from 1990 through 2001. There is no confirmation of the petitioner's receipt of this award in the pamphlet, as he purportedly won the award in 2004. Further, although the second page of the pamphlet is not completely legible, the evidence does not appear to mention the petitioner at all. The petitioner also submitted a letter, dated July 21, 2004, inviting the petitioner to attend the FESPACO 2005, and to "compete for the esteemed Paul Robeson Award." The petitioner only claims that he was nominated for this award, not that he won it. It is unclear from the letter if he was ever nominated or whether he was just asked to compete to become one of the potential nominees. Nonetheless, even if he was nominated, such nomination would not be sufficient to fulfill this criterion.

In his Request For Evidence (RFE), the director requests an actual copy of the Hartley-Merrill International Screenwriting Prize, as well as evidence to establish the significance of the award. In response to the RFE, the petitioner provided a letter from the Hartley-Merrill, dated June 11, 2004. The letter notified the petitioner that he won the "South Africa Hartley-Merrill National Screenwriting Competition" for his screenplay "[REDACTED]" and invited him to a celebration on June 25<sup>th</sup> to recognize his achievement. In addition, the petitioner provided a picture from the website IMDbPro, dated March 15, 2008, with him holding what looks like a box, not a trophy, standing next to [REDACTED] and [REDACTED]. In his RFE response, the petitioner claims that this is a picture of him receiving the award which was presented to him by [REDACTED]. As the photograph purporting to be the petitioner receiving the award was dated March 15, 2008 and the celebration for the petitioner's award was held on June 25, 2004, the evidence provided is inconsistent. 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).

The petitioner also submitted a list of various participating countries in the National Hartley-Merrill Screenwriting Prize, which highlighted the participating artists and supporters from 1999 through 2000. It is unclear why the petitioner provided a list of the participating artists for the years he was not involved in the competition, but failed to submit the list for the years he was allegedly a participant and winner. He also submitted "A Brief Description of Our [Hartley-Merrill International Screenwriting Prize] Organization and Background." The source of this document is unclear. Nonetheless, the document explains that each participating country selects a winning screenplay, and the winning screenplay represents the country in the overall Hartley-Merrill world competition. The petitioner also provided a pamphlet from the 2004 celebration, where he is not credited as being the national winner. Further, the pamphlet clearly indicated that the petitioner was not the 2004 grand prize (world) winner. Finally, a letter from [REDACTED] of the Ethekwini Municipality was also submitted. The undated letter congratulated the petitioner on winning the Hartley-Merrill Screenwriting Prize.

In his decision, dated June 10, 2008, the director found that the evidence was not sufficient to meet this criterion. On appeal, no new evidence for this criterion was provided. We agree with the

director that the petitioner failed to establish that he has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

First of all, a copy of the actual award or a picture of the trophy was never submitted, as requested in the RFE. Nonetheless, assuming the petitioner has won this award, the petitioner was only selected for the National (South African) Hartley-Merrill prize. Therefore, while the petitioner represented South Africa with his script in the world competition, he did not receive the award for the grand prize. The petitioner provided some detail about the grand prize selection, however there was no documentation providing any specific details about how the petitioner's screenplay was selected for the national competition in South Africa. Moreover, like the director, we are not persuaded that the actual Hartley-Merrill grand prize award would fulfill this criterion. The information provided indicates that the competitors for this award are novice screenwriters, who have not yet been published. Without other documentation of the award such as evidence regarding its prestige, the selection process or the candidates that the petitioner was competing against, the petitioner failed to establish the national or international recognition of this award.

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 submitted no evidence that either of the awards given to the petitioner constitutes a nationally or internationally recognized prize or award. We also agree with the director that the competition is relatively new, and only open to up-and-coming screenwriters in 21 participating countries. As such, this competition cannot be considered a top-caliber competition.

As the evidence fails to establish that the petitioner has received any prizes or awards consistent with national or international acclaim that can be considered lesser nationally or internationally recognized prizes or awards for excellence in screenwriting, 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.*

The petitioner did not initially submit any evidence for this criterion. As such, the RFE indicated that this criterion was not claimed. However, in response to the RFE, the petitioner claimed to be a member of the South African Scriptwriter Association ("SASWA"), which he said is equivalent to the Writer's Guild of America ("WGA"), and of the National Television and Video Association of South Africa ("NTVA"). Additionally, the petitioner claimed to serve as an executive member of the Cape Chapter of SASWA. The evidence he provided to substantiate these claims included a webpage from WGA explaining why one should join the organization, and internet pages from SASWA's website detailing the aims and objectives of the organization. The SASWA website indicated its Cape Chapter members, and the petitioner's name was not listed. The petitioner also provided an email from ██████████ Secretary of the SASWA Cape Chapter, who confirmed his membership in SASWA and his involvement on the executive committee. However, this email is not reliable evidence, as ██████████ email address does not identify her as a SASWA employee.

An internet page from [www.iol.co.za](http://www.iol.co.za), dated January 22, 1999, was also provided which announced SASWA's annual general meeting and stated that the petitioner's short film would be discussed. This announcement fails to prove the petitioner is a member of SASWA, as the association could discuss films of members and non-members. He also submitted an undated letter from [REDACTED]

Executive Director of NTVA, who confirmed the petitioner's membership in NTVA for several years, yet did not specify his dates of membership. As the petitioner claimed that membership in NTVA is equivalent to the Academy of Television Arts and Sciences in America, he provided a web page explaining America's Television Academy and its mission statement. However, the webpage did not confirm its equivalence to NTVA. The petitioner also submitted a letter, dated March 17, 2008, from [REDACTED], Film Commissioner of Cape Film, confirming that the petitioner was a founding member of the Cape Film Commission, and then was elected as the first chairman of the board in 2000. The letter provided a list of the responsibilities of the board's chairman.

The director's decision found that the petitioner failed to provide evidence to establish the requirements necessary for membership in the organizations in which the petitioner claimed to belong. On appeal, the petitioner provided additional information in an attempt to cure the deficiencies cited in the director's decision. The petitioner submitted a letter from [REDACTED] of SASWU, dated July 28, 2009, which stated that the petitioner is a "gold" member of SASWA. The letter explains that "gold" members of SASWU must have "been employed as a screenwriter at the level of a head writer, Script Editor or Story-liner or had own concept for a series or feature-film produced." The petitioner also provided an internet page from [www.wga.org](http://www.wga.org) that detailed the membership requirements for WGA, which he and [REDACTED] of SASWU claim is an equivalent membership. The petitioner also submitted the SASWU's membership requirements, taken from its website, which details what specific prerequisites are required for its members, and for the varying degrees of members including "gold" members. SASWU's website also specifically provides life membership for its "platinum" members. According to the website, SASWU members become "platinum" members "on the recommendation of the National Committee." "Platinum" members represent "gold members who have distinguished themselves in the scriptwriting fraternity, either by garnering national or international awards for their work, for exceptional advocacy for the scriptwriting community or by their outstanding service to writing education." A list of International Affiliation Writers Guilds ("IAWG") was also submitted from the IAWG website to illustrate that SASWU and WGA are affiliate members. Lastly, the petitioner submitted another letter from [REDACTED], Executive Director of NTVA, who again confirmed the petitioner's membership in NTVA and stated that NTVA membership "was open to any person who was actively engaged in making creative contributions to any of the film, television or allied industries of the Republic of South Africa and dedicated to the aims of this association and approved by the Central Steering Committee."

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 to establish that outstanding achievements are required for membership in any of these organizations. According to [REDACTED], NTVA membership "was open to any person who was actively engaged in making creative contributions to any of the film, television or allied industries of the Republic of South Africa." The evidence provided demonstrates that membership requirements for NTVA are very broad, and require little more than involvement in the media industry. Similarly, no membership requirements were provided regarding the Cape Commission. Further, the record does not include evidence (such as membership bylaws or official admission requirements) for NTVA or for the Cape Commission to show that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the field. Moreover, while SASWA is more selective by requiring employment as a screenwriter at the level of a head writer or the production of a series or feature-film that represented an original concept of the potential member, outstanding achievements do not appear to be required. SASWA allows head writers or producers, who produced their own material, to become members without requiring outstanding achievements. It appears that "platinum" members would more closely fit within the meaning of this criterion insofar as platinum members must have "distinguished themselves in the scriptwriting fraternity."

The petitioner also failed to demonstrate that membership in the various associations for which he claims to be a member is judged by recognized national or international experts in the field. While NTVA's Executive Director indicates that NTVA members have to be approved by the Steering Committee, there is no proof that these committee members are recognized national or international experts in the field. Moreover, in order to be a "platinum" member of SASWA, it is clear that members are judged by the National Committee who has recommended them for its elite membership. However, there is no proof that "gold" members are similarly judged, or even that "platinum" members are judged by national or international experts in the field. There is likewise no evidence in the record to support that Cape Commission membership is judged by national or international experts in the field.

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.*

The petitioner submitted the following evidence:

1. An article in *London Life*, written by Elizma Nolte and undated, entitled, "Home-grown Shakespeare opens doors for SA film makers;"
2. An article, written by Ilse Federicks, entitled, "Durban bid to lure US movie makers," dated October 19, 2003, from [www.suntimes.com.za](http://www.suntimes.com.za);

3. An article entitled "A Backyard for Tinseltown?" from [www.bday.co.za](http://www.bday.co.za), without a date and without an author. The article states that the petitioner is an "SA film maker without a track record" who "seems to be going places, unlike most aspiring local screenwriters;"
4. An article entitled, "Durban International Film Festival," which indicated it was first published on August 20, 2002. However, it does not provide a date for the instant publication and there is no author listed. It was taken from a website entitled [www.artsmart.co.za](http://www.artsmart.co.za). The article is about the film festival, and only mentions that the petitioner will attend the festival to present his film, Othello;
5. An article entitled, "Durban International Film Festival," which indicated it was first published September 6, 2002. However, it does not provide a date for the current publication and there is no author. It was taken from a website entitled [www.artsmart.co.za](http://www.artsmart.co.za). The article only mentions that the petitioner will introduce his film, Othello;
6. An article entitled, "Durban Film Festival," which was not dated and did not provide an author's name. It was taken from [www.rage.co.za](http://www.rage.co.za). The article only mentions that the petitioner will introduce his film, Othello, at the festival;
7. An article entitled, "On the train to tinsel town," dated November 25, 1999, by Andrew Worsdale, was taken from [www.chico.mweb.co.za](http://www.chico.mweb.co.za). The article is not about the petitioner, it only mentions that he made a pilot of Othello;
8. An article entitled, "Generations star plays the dying game again," dated January 24, 2002, written by Aldrin Naidu was printed from [www.iol.co.za](http://www.iol.co.za);
9. An article entitled, "Coffee tantrum star causing a stir," dated February 28, 2002, without a listed author taken from [www.iol.co.za](http://www.iol.co.za);
10. An article entitled, "Shakespeare tragedy with Cape Town flavor," dated November 28, 2001, written by Jearine van der Merwe, from [www.iol.co.za](http://www.iol.co.za);
11. An article entitled, "Couples are Peas in a pod," published in the *Postweekend* in September 2002. The name of the author is not clear, as the copy provided is barely legible;
12. An article entitled, "Lights, Camera, Action," without a date or author, in *Metrobeat*;
13. An article entitled, "Down-to-earth dreams as Sithengi closes," written by Aldrin Naidu dated November 16, 2001, without a source listed;
14. An article entitled, "Durban's star on the rise," dated October 20, 2003 and without an author listed, taken from [www.dailynews.co.za](http://www.dailynews.co.za). The petitioner is mentioned, but the article is not about him;
15. An article entitled, "Post-Apartheid South Africa Beckons," from [www.aegis.com](http://www.aegis.com). The article indicates it was written in the *Los Angeles Times* on April 23, 2004 and written by Ann M. Simmons and Solomon Moore. The article is about race relations in South Africa, and merely quotes the petitioner and mentions that he is a filmmaker who came to the US for his wife to take a course at the Los Angeles Film School;
16. An article entitled, "Sweet and sour mix from talented trio," written by Owen Williams. The source is unclear and the article is not dated. The article is about the Stardust cabaret, and only mentions that the petitioner is a director;
17. An article entitled, "South African Scriptwriters Association," dated January 22, 1999 without an author indicated taken from [www.iol.co.za](http://www.iol.co.za). The article announces a meeting where petitioner's short film will be discussed;

18. An article entitled, "Artist to promote SA tourism," dated October 13, 2002, taken from [www.suntimes.co.za](http://www.suntimes.co.za), without an author listed;
19. An article entitled, "Mystique," dated July 14, 1998, without an author listed, taken from [www.iol.co.za](http://www.iol.co.za). The petitioner is mentioned for his lighting designs, and does not relate to the petitioner's field of classification;
20. An article entitled, "'Doctor Pop' sails up the dance charts," written by Buddy Naidu and dated November 10, 2002, printed from [www.suntimes.co.za](http://www.suntimes.co.za). The article is about a vocalist, and mentions that one of her songs will be in the petitioner's movie;
21. An article entitled, "Bard tidings for Sello," written by Adrienne Sichel and dated July 24, 2003, taken from the website Tonight Gauteng, with the web link cut off the page. The article is about an actor, and the petitioner is just mentioned because the actor had been in his film, Othello;
22. An Othello review by Alan Bird on [www.londontheatre.co.uk](http://www.londontheatre.co.uk), dated June 4, 2004, about the lead actor in the petitioner's film;
23. An article entitled, "Make way for another Miss World," written by Viral Bhayani, dated July 15, 2004 taken from [www.indianewengland.com](http://www.indianewengland.com). This article does not even mention the petitioner;
24. An article entitled, "Testing the waters," written by Bhawna Gera, without a date and taken from [www.hindustantimes.com](http://www.hindustantimes.com). This article does not even mention the petitioner; and
25. An article entitled, "Out of Africa," by Leanne Dickerson, dated November 4-10, 2003, from the *Hollywood Reporter*. This article does not even mention the petitioner.

The RFE requested evidence that illustrates the nature and purpose of each publication, its circulation and its significance. In response to the RFE, the petitioner additionally provided:

26. Excerpts of a book called, "Film Facts," by Patrick Robertson, first published in 2001, which briefly mentions the petitioner stating "another Othello (SA 99), directed by Eubulus Timothy, came from South Africa;"
27. Item 3 was resubmitted, again without a date or author;
28. Internet pages from [southafrica.info](http://southafrica.info) which provides the circulation for various South African publications; and
29. Item 8 was resubmitted, stating the distribution of Argus. However, the submission is not clearly from Argus.

The director's decision found that the evidence provided was insufficient to meet this criterion. On appeal, the petitioner failed to provide any further evidence to ameliorate the deficiencies found by the director.

The regulatory parameters require that the date and author of the material to be provided. Yet, the authors of the articles were not submitted for Items 3, 4, 5, 6, 9, 11, 12, 14, 17, 18, 19 and 27. Additionally, the petitioner failed to provide a date for Items 1, 3, 4, 6, 12, 16, 24, and 27. As this evidence does not comply with the regulations, it should not be considered. Nonetheless, the AAO considered all this evidence in the record, and still finds it has not sufficiently satisfied this requirement.

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.<sup>1</sup>

As the petitioner was only briefly mentioned in Items 4, 5, 6, 7, 14, 15, 16, 17, 19, 20, 21, and 26, these articles were not written primarily about the petitioner. Moreover, in Items 22 through 25, the petitioner's name was not even referenced. As such, this evidence does not fulfill the regulatory guidelines that the published material must be about the alien.

The petitioner also failed to submit evidence to establish that the articles submitted were published in a professional or major trade publication or other major media. Most of the articles submitted were published on the Internet. We note that in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, we are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is a form of "major media." The petitioner must still provide evidence, such as a widespread readership or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or a form of major media in order for us to credit these articles. Item 28 attempts to establish that some of the articles provided would constitute major media. Of the articles submitted, many came from [www.iol.co.za](http://www.iol.co.za), which appears to be the website for *Cape Argus*. However, it is not completely clear that the articles on this website are always published in *Cape Argus*, and there was no evidence to prove the readership for its internet site. However, according to Item 28, *Cape Argus*' circulation is limited to Cape Town and its readership is likewise confined to middle and upper classes. Similarly, *Business Day* appears to have limited circulation with only 113,000 daily readers and 41,322 daily sales of the 14.5 million South Africans which purchase a paper on a daily basis. The *Daily News* appears to also have limited circulation. Moreover, while the *Sunday Times* would represent major media, the articles that appeared in this publication are otherwise deficient as cited above.

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

---

<sup>1</sup> 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.

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 or a competition involving top scriptwriters is of far greater probative value than judging a regional or youth competition.

The petitioner submitted the following evidence initially and in response to the RFE:

1. A reference letter, dated July 21, 2004, from [REDACTED] a Festival Coordinator at the Los Angeles Film School, which confirmed that the petitioner was “asked to serve as a judge at the monthly festival.” The letter also stated the petitioner “is an artist of distinction who was chosen for this critically important task by virtue of his lengthy experience and international stature as a leader in his field.”
2. Internet pages from the University of Natal (the web address was cut off on the print out) regarding Panel Discussions and Workshops at the 23<sup>rd</sup> Durban International Film Festival 2002. One discussion, “How to Shoot on a Shoe String Budget,” was led by the petitioner and his wife.
3. An undated letter from [REDACTED] Executive Director of NTVA, was provided in response to the RFE. He stated that the petitioner was “appointed a judge in our annual ‘Stone Awards’ Competition, organized to recognize the standards of excellence in our community.” The petitioner in his response equated the Stone Awards with the Emmy Awards in America, and provided information about the Emmy Awards.
4. An article from [www.iol.co.za](http://www.iol.co.za), dated December 4, 1998 and entitled “1998 Stone Award,” was also provided in response to the RFE. It stated that the petitioner was one of the judges for this competition. The article mentions that there was also a “student panel” that judged this competition.

The director in his decision found that the information requested in the RFE was not provided in the petitioner’s response. In his RFE, the director asked the petitioner to elaborate on the petitioner’s duties and responsibilities as a judge for the Los Angeles Film School and the Stone Awards, as well as providing the actual invitations to serve as a judge. In addition, the RFE requested that the petitioner explain how his conducting a workshop at the Durban Film Festival constitutes judging the work of others. As this information was not sufficiently supplemented in the petitioner’s response to the RFE, the director found the petitioner was unable to fulfill this criterion in his decision.

On appeal, the petitioner admitted that he judged the work of students for the Los Angeles Film Festival, and therefore withdrew this claim from his petition. The petitioner similarly admitted that he had insufficient evidence to prove he acted as a judge at the Durban Film Festival. Nonetheless, the

petitioner continued to maintain that he participated as a judge for the Stone Awards. However, he only provided one additional piece of evidence, a page from the National Academy of Television's website that explained that excellence in television is recognized by the Emmy Award. He provided this to supplement his argument in his appeal brief that the Stone Award was the Emmy Award of South Africa, yet no other evidence provides support for this claim. In his appeal brief, the petitioner also lists the duties, criterion for selecting judges and the nature and purpose of the award but similarly fails to provide any evidence to substantiate these claims. 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).

There is no evidence showing the names of the television writers or producers who were evaluated by the petitioner, their level of expertise, documentation of his assessments, or the level of acclaim associated with judging the Stone Awards. Without evidence showing, for example, that the petitioner's activities involved judging top television writers or producers in a national level competition or were otherwise consistent with sustained 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.*

The RFE considered all the reference letters provided by the petitioner as potential evidence for this criterion, although the petitioner did not initially claim it as applicable. However, the RFE concluded that the reference letters "fall short of establishing that [the petitioner has] made any original contributions of major significance to the field." In response to the RFE, the petitioner claims that his original scientific and artistic contribution to television broadcast in South Africa was his use of microwave technology to transmit live television. To support this claim, he provided a letter from [REDACTED], Chief Executive Officer at e-TV, who said that the petitioner "made creative use of the latest technology. It was the very first time that microwave technology was used to transmit live television signals from Robben Island to the mainland."

In his decision, the director found that the petitioner had not satisfied this criterion, and we agree with the director's assessment. On appeal, the petitioner did not claim or provide further evidence regarding this criterion.

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

lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

With regard to the petitioner's claim that he contributed to his field by utilizing microwave technology for a television production, we agree with the director that "the record contains no objective documentary evidence to establish the petitioner's actual contributions to this project including the method and technology utilized to transmit the signals." Moreover, the petitioner did not attempt to provide this information on appeal.

As discussed above, the petitioner has failed to establish how his work has influenced his field and to detail specifically what contribution he has made of major significance in his field. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner did not initially claim this criterion. However, in his response to the RFE, the petitioner claimed that he was given the opportunity to showcase his work in the Durban International Film Festival. To this end, he provided a letter, dated March 4, 2008, from [REDACTED] of the Durban International Film Festival which said he was "invited as part of the Official Selection of the 23<sup>rd</sup> Durban International Film Festival in 2002." The letter indicates the film screenings were complemented by a workshop in which the petitioner participated. However, the evidence does not clearly prove that the petitioner's films were actually shown at the festival. The petitioner also submitted evidence titled, "About the Durban International Film Festival," which notes the objectives of the festival. This evidence did not have a source and could have been created by the petitioner. Another letter, to demonstrate that his film, "Othello," was screened during the Commonwealth Film Festival in Manchester, England in 2002, was also submitted. The letter was written by [REDACTED] of the Commonwealth Film Festival and was dated July 21, 2004.

In his decision, the director found that the evidence provided failed to satisfy this criterion. As such, the petitioner submitted additional evidence on appeal including a letter from his agent at GVA Talent Agency that confirmed his film Othello was invited for a special screening at the Durban Film Festival. Her letter also indicated that the Lord Mayor of Manchester and the South African High Commissioner to the United Kingdom hosted a reception in the petitioner's honor. The petitioner also provided a letter from a director, [REDACTED], dated August 12, 2004, who stated that the petitioner's "film of Othello was important enough to win the role of Othello for its leading actor at the Royal Shakespeare Company." This evidence was provided to support his claim that the screenings of his film made it "important," although the petitioner himself admitted there were "no direct accolades gained for the film." A letter with general complements about his artistic ability, written by [REDACTED] was also submitted.

Frequent display of artwork is intrinsic to most professions in the visual arts. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. In this case, the record documents the

petitioner's exhibition of his films at the Durban Film Festival and at the Commonwealth Film Festival. While the petitioner submitted letters to show that his films were screened at these two film festivals, the record does not persuasively establish that these events were nationally or internationally recognized as premier festivals in the petitioner's field or that the petitioner's work was otherwise displayed in a manner consistent with sustained national or international acclaim. The petitioner failed to provide any evidence that the two film festivals represent premiere film festivals. One letter mentioned that two government officials hosted the petitioner a reception in his honor, but there was no evidence provided as to who the other persons in attendance of the film festival included, how the films to be screened were chosen or whose films were viewed at the festival. In review, the relevant evidence does not establish that the petitioner has displayed his work at artistic exhibitions or showcases in a manner consistent with the requisite sustained acclaim. Accordingly, he does not meet 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 the following evidence:

1. A reference letter, dated July 16, 2007, from [REDACTED] of Greater Vision Artists ("GVA") Talent Agency who stated that the petitioner has "written, directed and produced a series of independent films and television shows which he gained acclaim for" and that he has "recently signed a contract to write and direct a documentary."
2. A contract, dated May 14, 2007, establishing that GVA Talent Agency solely represents the petitioner as his agent.
3. A reference letter, dated June 18, 2007, from [REDACTED] of Finance Networks who stated that the petitioner brings "new and innovative ideas to old solutions" and that he has been involved in producing and directing a new reality series "Big Money Funding."
4. A reference letter, dated July 10, 2007, from [REDACTED] of Dream7 Entertainment who indicated, with regard to the petitioner's screenwriting, that his company expects to "bring one of [REDACTED]'s unique visions to the screen within the year and to find future opportunities to develop and produce his work." His letter stated that he thinks the petitioner "will be a valuable member of the film community in the United States."
5. A reference letter, dated July 6, 2007, from [REDACTED] an actor who has worked with the petitioner, stated the petitioner is "talented, productive and resourceful."
6. A reference letter, dated May 25, 2006, from [REDACTED] of Sigma Entertainment that confirmed the petitioner will be one of four producers who will be producing a project entitled "Little Murder."
7. A letter, dated September 26, 2003, from [REDACTED] of MGM Home Entertainment to [REDACTED] that did not mention the petitioner and stated only that MGM was acquiring distribution rights to two pictures to be produced by Sigma Entertainment. The letter does not specify the names of the pictures, and the petitioner is not copied on the letter.
8. A letter, dated July 22, 2004, from [REDACTED] of Sithengi who confirmed that the petitioner "had judged the winning scriptwriters in the past and will once again do so this year in November 2004." He also stated that the petitioner was "chosen for this critically important task by virtue of his experience and international stature as a leader in his field."

In addition, his letter declared that the petitioner was the “founding Chairperson of the Cape Film Commission.” (Item 8 was accompanied by internet pages from [www.sithengi.co.za](http://www.sithengi.co.za), detailing the procedure for participating in the Sithengi Writers’ Forum. The forum allowed entry into the contest for anyone who had a first draft of a screenplay, or who had a partial draft and had a screenplay that was previously bought or produced.)

9. A reference letter, dated April 2, 2004, from [REDACTED] of the South African High Commission, who stated that the petitioner is directing a South African performing group for a Freedom Day Celebration in June of 2004.
10. A reference letter, dated July 19, 2004, from [REDACTED] of SABC 3 confirming that the petitioner directed two short movies for SABC 3.
11. An article from [www.iol.co.za](http://www.iol.co.za), dated December 4, 1998, entitled “1998 Stone Award” which stated that the petitioner was one of the judges for this competition. The article also mentioned that a “student panel” also judges in this competition. It also said that the petitioner produced and directed the entertainment for the “some 200 guests.”
12. A list of Board Members on the Cape Film Commission from [www.westerncapefilms.co.za](http://www.westerncapefilms.co.za), that lists the petitioner, was submitted.
13. A reference letter, dated July 26, 2003, from [REDACTED] of e-TV confirmed that the petitioner produced some of e-TV’s earliest programs.

The director in his RFE asked for evidence that identifies the organization in which the petitioner claims to have provided a leading role, the petitioner’s position in that organization and documentation that illustrates the petitioner’s role in relation to other employees within the organization. In response to the RFE, the petitioner submitted an undated letter from [REDACTED], Executive Director of NTVA, who said the petitioner was “NTVA’s official representative on the Board of the ‘Cape Film Commission’ where he was elected as the inaugural Chair of the Commission in Cape Town, South Africa.” He also provided pages from [www.capefilmcommission.co.za](http://www.capefilmcommission.co.za), which provided an overview of the governing structure of the organization and included the roles and functions of the chairperson. The website also listed the various films that were commissioned. However, the petitioner did not claim to be involved in any of the films listed, nor was his name credited on this list anywhere.

The director’s decision found that the petitioner had failed again to provide proof that he played a leading or critical role for an organization and that the organization enjoyed a distinguished reputation. As such, the petitioner provided additional evidence to attempt to prove that the Cape Film Commission enjoyed a distinguished reputation. A letter from the Cape Film Commissioner, Laurence Mitchell, dated March 17, 2008, was submitted. His letter detailed the petitioner’s duties as chairman and said that he became the first chairman of the board in 2000. A letter from the councilor of the City of Cape Town, Dan Plato, dated June 29, 2008, was also provided. In the letter, [REDACTED] stated that the petitioner secured a “distinguished reputation” for the Cape Film Commission globally. He also confirmed that the petitioner was the founding chairperson of the Cape Film Commission with a board of twelve members, and provided a list of the petitioner’s responsibilities as chairperson. He specifically stated that a “Commissioner was hired that answered directly to the Chairperson and the Board.” The petitioner also provided filmographies, similar to a resume, for four directors ([REDACTED] and [REDACTED])

who shot movies in Cape Town. The petitioner claimed that each of these directors used the services of the Cape Film Commission, and that this claim along with the filmographies demonstrated that the commission enjoys a distinguished reputation in the field. However, none of these documents stated that these directors utilized the services of the Cape Film Commission.

We agree with the director that the petitioner failed to fulfill this criterion. The petitioner initially provided evidence, mostly in the form of reference letters, concerning his involvement in various projects as a producer or director. None of this evidence provided demonstrated that he played a leading or critical role in an organization. This evidence merely provided examples of his work as a producer and director. After the RFE, the petitioner focused, more appropriately, on his experience as the chair of the Cape Film Commission. However, the petitioner was still unable to establish that he performed a leading or critical role for an organization or establishment. In order to do this, the petitioner must demonstrate the nature of his role within the entire organization or establishment. However, there was no evidence demonstrating how the petitioner's role differentiated him from the others in the Cape Film Commission. While he provided a list of his duties, he never provided his role in comparison to others involved in the commission. On appeal, he listed the positions of other persons on the commission, however there was no evidence provided to substantiate these claims nor were there any descriptions provided as to the duties of the other employees or volunteers.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. Although the petitioner provides evidence of his appointment to chair of the Cape Film Commission, he failed to show that such position was commensurate with a leading or critical role. Recitation of the petitioner's title within the organization, without further evidence of his duties and actual role, is not sufficient to establish his leading or critical role for the organization.

The evidence further lacks proof that the organization for which the petitioner served had a "distinguished reputation." For example, no evidence, other than letters regarding the organizations' ability to draw producers and directors to Cape Town, was provided regarding the organizations' background, standing in the community or world, or any other aspect of its reputation. There was also no evidence provided to demonstrate that the commission had a distinguished reputation as compared to other organizations similar to it. While the petitioner tried to prove that the commission was responsible for attracting producers and directors, and that the commissioner's services were utilized by these media persons, there was no proof provided to support these claims. Moreover, sustained acclaim cannot be demonstrated as the petitioner's appointment as chairperson occurred approximately seven years prior to the filing of his petition, and there is no indication as to how long the petitioner served as a chairperson.

Moreover, Items 1, 3, 4, and 6 involve projects that the petitioner may not have completed or been involved in. The petitioner cannot establish that he has performed a leading role through a set of facts that occurred after the filing of his petition. A visa petition may not be approved based on

speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49.

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 initially provided his United States tax return for 2006 indicating that his adjusted gross income was \$20,149. The director, in his RFE, said that the petitioner must provide evidence that establishes that his remuneration is significantly high in relation to others in the field. In response to the RFE, the petitioner provided a memorandum from the Finance Network stating that the petitioner will receive \$3,500 per episode for his series "Big Money Funding." The document was signed by [REDACTED], the CEO of Finance Network, and the petitioner on December 12, 2008. The petitioner also submitted a comparison chart indicating the minimum rate for a similar episode length to that of "Big Money Funding" is \$2,973, along with two other charts that indicated the minimum wages for writers in the WGA. In his RFE response, he claimed that he has a contract with Virtual Content of California to write *Gotico*, but no proof of this contract was included in his response. Despite the additional information provided, the director found the petitioner failed to sufficiently respond to the RFE, as it appears that his compensation is just slightly above the minimum rates.

On appeal, the petitioner submitted a letter from his agent at GVA Talent Agency, dated August 1, 2008, which stated that the "total earnings for the project [petitioner's *Gotico* film] should be in excess of \$110,000." This letter indicated that the petitioner has not yet received money for his work on *Gotico*, and it appears that the petitioner has not even worked on the film yet. 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 Immigrant Petition for Alien Worker (Form I-140) was filed on July 30, 2007. As the petitioner has not even earned the potential \$110,000, evidence of this potential money to be paid in the future does not demonstrate that he "has commanded" a high salary or remuneration for services.

The petitioner additionally provided a letter written by [REDACTED] of SASWU who stated that he was "one of the top-earning writers in the country." However, this statement was not supported by any evidence that indicated how much the petitioner actually earned. Moreover, the petitioner never satisfied the plain language of the regulatory criterion which requires that he submit evidence that he has commanded a high salary "in relation to others in the field." The petitioner offered no basis for comparison by failing to show that his compensation was significantly high in relation to others in his field, other than providing the minimum salaries for persons in his field. There is no indication that the petitioner has earned a level of compensation that places him among the highest paid scriptwriters or producers in South Africa, the United States or any other country.

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