

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

B2

MAY 20 2009

FILE:

LIN 06 039 51548

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

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. The petitioner appealed the decision to the Administrative Appeals Office (AAO).¹ The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director and the AAO determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director and the AAO found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On motion, counsel argues that the petitioner meets the statutory and regulatory requirements for classification as an alien of extraordinary ability. The petitioner's motion was accompanied by copies of previously submitted documents. For the reasons discussed below, the petitioner's motion does not overcome the AAO's findings.

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

¹ The petitioner was initially represented by attorney Miriam B. Riedmiller. In this decision, the term "previous counsel" shall refer to Ms. Riedmiller.

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 18, 2005, seeks to classify the petitioner as an alien with extraordinary ability in the field of Filipino folk music. 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, international recognized award). In addressing previous counsel’s statement that the director erred in concluding that the petitioner did not have a qualifying one-time achievement, the AAO’s appellate decision stated:

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could only serve to meet one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees and the prize itself is global . . . and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field.

We will not narrow the petitioner’s field to Filipino folk music for purposes of considering whether the petitioner has a major internationally recognized award. Rather, in order to demonstrate a one-time achievement, the petitioner must demonstrate that he has won an award open to members of the field worldwide and recognized internationally at least in the field of dance. As will be discussed in detail below, the petitioner’s “awards” are all either regional certificates of merit, institutional expressions of appreciation, a scholarship or government grants issued to the dance troupe founded by the petitioner. As they cannot even be considered lesser nationally or internationally recognized awards, they clearly cannot serve as evidence of a one-time achievement.

On motion, counsel states:

[T]he AAO decision proceeds to unreasonably suggest that Congress intended for international recognition of any relevant awards or acclaim, as evidence of a top award in the field.

To assign an exclusively international requirement to a statute that is inclusive of qualified national acclaim, distorts the intended range of this particular benefit. This interpretation erroneously blurs the separate concepts of national or international acclaim as referenced in the statute, and suggests that even national acclaim must have international recognition; a clear departure from the statute's intended purpose.

Counsel misstates the AAO's findings and ignores the plain language of the regulation at 8 C.F.R. § 204.5(h)(3). This regulation requires that a qualifying one-time achievement be "a major, international recognized award." Therefore, the AAO's determination that a one-time achievement "must be internationally recognized in the alien's field as one of the top awards in that field" fully complies with the regulation at 8 C.F.R. § 204.5(h)(3). Nevertheless, counsel does not specify the petitioner's awards that qualify as a one-time achievement or point to evidence in the record demonstrating that they have major international recognition.

Barring the alien's receipt of a major internationally recognized award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.²

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The director concluded that the petitioner's "awards" consisted of certificates of appreciation for participation rather than as recognition for excellence in the field, honors conferred by local or regional organizations and a scholarship to attend a class on funding the arts.

On appeal, counsel asserts that the definition of "prize" in Black's Law Dictionary encompasses certificates of appreciation and that even individuals of extraordinary ability continue to sharpen their skills such that scholarships should be considered under this criterion.

Counsel is not persuasive. The regulation at 8 C.F.R. § 204.5(h)(3)(i) does not merely require evidence of prizes or awards, but prizes or awards *for excellence in the field of endeavor*. The

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

phrase “prizes or awards for excellence” is not open to wide interpretation. Rather, a prize or award for excellence is principally designed to recognize past achievement and is not generally contingent on future employment or education/training commitments.

The petitioner submitted a certificate of participation in a course on funding the arts from the Institute for Cultural and Arts Management (ICAM) in the Philippines and a letter from ICAM advising that the petitioner had been accepted as a “scholar” in the program entitling him to free airfare and tuition.

We note that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) relating to aliens of exceptional ability, a lesser classification than the one sought, allows for the submission of certificates from an institution of learning. Such certificates, while they may be indicative of a degree of expertise significantly above that ordinarily encountered in the field (the standard for aliens of exceptional ability), do not rise to the level of establishing extraordinary ability, defined as sustained national or international acclaim. We concur with the director that evidence of participation in coursework cannot be considered a prize or award for excellence. Finally, the record contains no evidence that ICAM selected the petitioner as a “scholar” for a funding the arts course based on his excellence as a musician, his claimed field of expertise. Thus, while we concur with the director that a scholarship is not a qualifying prize or award indicative of sustained national or international acclaim, we further note that there is no evidence that the petitioner’s scholarship was issued in recognition of his excellence in the field of music.

The petitioner also submitted the following “certificates” of recognition (two appear on company letterhead rather than formal certificate stationary):

1. A certificate of recognition and appreciation for sharing his time, skills and efforts with the Filipino-American youth in the Chicago area from the President of Red Carpet Productions,
2. A certificate of recognition for promoting Filipino culture from the Filipino-American youth group in the Chicago area, Samahang Kapatid,
3. A certificate of recognition for promoting Filipino culture from the Filipino American Council of Greater Chicago,
4. A certificate of recognition for outstanding and valuable contributions at a performance from the Center for Immigrant Resources and Community Arts in Chicago and
5. A 1999 certificate of recognition from the E. Rodriguez Jr. High School for outstanding and skillful rendition of music which contributed to the Kalinigan Dance Troupe’s third place finish in a high school competition in Turkey.

The first four certificates were issued by local Chicago entities and cannot be considered nationally or internationally recognized. Moreover, they express recognition and appreciation rather than recognition for excellence in comparison with other musicians. The final certificate expresses appreciation from a local school for accompanying its dance troupe when it won an award at a competition limited to high schools. The petitioner himself does not appear to have won an award, which appears to have been a dance award, not a music award. More specifically, it does not appear that the petitioner was competing against other musicians for this certificate or that the high school dance troupe was specifically recognized for the adult musician accompanying their dance.

The petitioner also received “Laguna’s Best” from the Laguna Association of the Midwest, Inc. in the category of outstanding contributions in the Philippine Cultural Arts. Those eligible to receive this recognition must be a native of Laguna and a U.S. citizen or legal resident anywhere in the United States. We are not persuaded that an award or prize limited to natives of a foreign province residing within the United States and issued by an extremely local entity can be considered nationally or internationally recognized either in the United States or the Philippines. On appeal, counsel references a letter from ██████████, President of the Laguna Association of the Midwest, Inc., who asserts that the Laguna’s Best award “is given to show extraordinary and international prominence of sons and daughters of [the] Laguna province.” This statement may reflect the intent of the association, but does not change the fact that the award is limited to natives of a foreign province residing in the United States. The record contains no evidence that those selected for this honor are reported in national media or other evidence that non-Laguna dancers outside of Chicago recognize this prize or award as significant.

On motion, counsel states:

The AAO disputes the validity of [the petitioner’s] recognition and awards for excellence in the Filipino arts and music. As evidence of such recognition, [the petitioner] has submitted evidence of formal awards, including honors conferred by national, regional and local organizations. Prior counsel has addressed the significance of the term “prize” and/or “award” as meaning an offering in recognition of success or achievement. In its denial, the AAO suggests that [the petitioner’s] receipt of scholarships and grants in recognition of his experience in the field and for continued development fail to provide evidence of an achievement for past work. It [sic] reasoning is that the grant or scholarship is contingent on future development; however, this assessment clearly disregards the importance of these types of awards that recognize the significant experience and ability of recipients. The general nature of these awards is to recognize the excellence of the recipient in a particular field and to encourage the continued development. It does not imply, as asserted by the AAO, that it is contingent on future achievements, but rather is extended to [the petitioner] based on his past experience and excellence in his field.

With regard to the petitioner’s receipt of scholarships and grants, counsel discusses the “general nature” of such honors, but there is no supporting evidence showing that these sources of developmental funding are tantamount to nationally or internationally recognized prizes or awards

for excellence in the field. Counsel does not address the AAO's findings that the petitioner's remaining awards reflect local or regional recognition rather than national or international recognition. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no evidence showing that the petitioner's honors, awards, grants, and scholarships had a significant level of recognition beyond the presenting organizations.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The director concluded that the Bayanihan dance troupe, with which the petitioner performed until 1999, was not an "association" as contemplated in the regulation at 8 C.F.R. § 204.5(h)(3)(ii), that the petitioner had not established that the International Dance Council (CID) or the Philippine Folk Dance Society require outstanding achievements. The director also noted that the CID membership documented postdates the filing of the petition.

On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(ii) does not limit memberships to "professional" associations and, thus, that employment with a prominent dance troupe should serve to meet this criterion. Counsel further asserts that it is not "an issue" that the membership in CID postdates the petition because it simply "corroborates" the evidence of his "membership" in Bayanihan. Counsel does not address the director's concerns that the record does not establish that either CID or the Philippine Folk Dance Society require outstanding achievement other than to reiterate the claim that the petitioner meets this criterion through his "membership" in Bayanihan.

Counsel is not persuasive. In the context of the full regulation at 8 C.F.R. § 204.5(h)(3)(ii), which requires evidence of "membership in associations" we concur with the director's interpretation of "associations" as excluding performing arts troupes. It is inherent to performing arts to perform within a group just as many athletes perform on a team. The supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major

league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

We are not persuaded that performing with a distinguished dance troupe is any more persuasive than playing on a major league team, which, for the reasons stated in the commentary, is not presumptive evidence of eligibility.

Moreover, the regulation requires that the association require outstanding achievements. We acknowledge that the Internet materials and application form submitted reveal that applicants must audition to join Bayanihan. Once a dancer joins the troupe, however, the petitioner asserts that the dancer must attend "continuous training until become [sic] ready to perform with the troupe in its local and regular events then national tours and eventually international tour participating in different culture and arts events." Thus, it appears that joining Bayanihan initially does not require outstanding achievements, but includes dancers who are still training to reach a national or international performance level. We acknowledge that the petitioner himself performed with the group at international events. At issue, however, are the minimum requirements for "membership" in the troupe. The petitioner's role within the group is far more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) and will be discussed below in that context.

The record establishes that the CID admitted the petitioner to membership on March 3, 2006. Contrary to counsel's assertion on appeal, the fact that the petitioner was not a member of CID until after the petition was filed is relevant. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Moreover, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regardless, the director also concluded that CID did not require outstanding achievements of its members. The petitioner submitted materials about CID that appear to have been sent to him from an unknown source via electronic-mail. While these materials reflect that CID members "are the most prominent federations, associations, schools, companies and individuals in more than 120 countries," the materials later state that it is "open to membership, accepting organizations, institutions or persons with sufficient credentials in dance." These materials cannot establish that CID requires outstanding achievements of its members.

The petitioner is also a Lifetime Member of the Philippine Folk Dance Society. The petitioner submitted a self-serving statement asserting that Lifetime Members must meet one of the following criteria:

1. Excellent achievement in Philippine Folk Dance as a dancer, choreographer and director,

2. Outstanding contribution / work authored or directed by the member or applicant, or
3. Received national and international recognition / award as to excellence of his/her works.

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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). Without evidence from the society itself confirming its membership requirements, we cannot conclude that the petitioner's Lifetime Membership serves to meet this criterion. Moreover, even if we accepted the petitioner's self-serving statement, without additional explanation of what an "excellent achievement" is or at what level a Lifetime Member must have authored or directed a work, we cannot conclude that society Lifetime Membership requires outstanding achievements of its Lifetime Members.

On motion, counsel states:

In the absence of an explanation by the USCIS as to why his leadership role, creative expertise and direction fail to qualify him as an individual of extraordinary ability in his field, the presumption must be that he is an integral part of a nationally and internationally recognized performance group.

The issue is not [the petitioner's] eligibility as a member of a collective performance group, but rather, his expertise and heightened abilities as an individual participant and whether such expertise raised him to a very top level among his peers. The AAO decision fails to address whether [the petitioner] stands apart as an extraordinary member of the collective group, and merely dismisses his eligibility because he is a member of the group. This is counter to the argument made by the AAO that applicants are not of an extraordinary ability simply because they are members of a time [sic], because similarly, the applicant should not be disregarded simply for being such a member.

In our appellate decision, we concurred with the director's interpretation of "associations" as excluding performing arts troupes. We further noted that performing with a distinguished dance troupe is not any more persuasive than playing on a major league team, which, for the reasons stated in the commentary at 56 Fed. Reg. 60899 (Nov. 29, 1991), is not presumptive evidence of eligibility for this regulatory criterion. Finally, we noted that the regulation at 8 C.F.R. § 204.5(h)(3)(ii) states that the association must require outstanding achievements. Therefore, the issue for this criterion is not whether the petitioner has a "leadership role," performs as "an integral part," or "stands apart" from others in his troupes, but rather their specific requirements for admission to membership. As discussed on appeal, the nature of the petitioner's role within the Bayanihan and Lahing Kayumanggi troupes was relevant to the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii) and was properly addressed there.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation. In this case, there is no evidence showing that the petitioner holds membership in an association requiring outstanding achievements its members, as judged by recognized national or international experts in his field or an allied one.

Counsel further states:

[The petitioner] has presented evidence of his participation with the International Dance Council (CID); however, the AAO has found this evidence to not be compelling because such participation post dates the filing of the Form I-140. The regulations do authorize the review of materials and evidence in a motion to reopen/reconsider that were previously unavailable and material to the case. Because [the petitioner's] work with the CID was subsequent to filing, it was not available at such time, but is of material significance to demonstrate his national and international recognition for work in the Filipino folk arts.

Counsel does not specify the regulations to which he refers. Nevertheless, nothing in the regulation at 8 C.F.R. § 103.5 governing motions to reopen or reconsider requires that USCIS consider evidence of achievements that post-date the filing of the petition. The petitioner's CID membership was reviewed by the AAO and it was determined that the CID admitted the petitioner to membership on March 3, 2006. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's CID membership in this proceeding.

Matter of Katigbak, 14 I&N Dec. at 49 provides:

If the petition is approved, he has established a priority date for visa number assignment as of the date that petition was filed. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

Section 204 of the Act requires the filing of a visa petition for classification under section 203(a)(3) of the Act. The latter section states, in pertinent part: "Visas shall next be made available to *qualified immigrants* who *are members* of the professions." (Emphasis added.) It is clear that it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

Id. The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg. Comm. 1977). That decision reemphasizes the importance of not assigning a priority date to an unqualified alien based on experience acquired subsequent to the filing date of the petition. This principle has been extended beyond the alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg. Comm. 1977). That decision provides that a petition should not become approvable under a new set of facts. Recognizing that *Matter of Katigbak*, 14 I&N Dec. at 49, was not "foursquare with the instant case" in that it dealt with the beneficiary's eligibility, *Matter of Great Wall*, 16 I&N Dec. at 145, still applies the reasoning. The decision provides:

In sixth-preference visa petition proceedings the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met, as well as determine whether the alien meets the minimum requirements to perform the offered job satisfactorily. It follows that such consideration by the Service would necessarily be focused on the circumstances at the *time of filing* of the petition. The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.

Id. (Emphasis in original.) Finally, when evaluating revisions to a partnership agreement submitted in support of a petition seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, this office relied on *Matter of Katigbak*, 14 I&N Dec. at 49 for the proposition that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts." *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. While a membership obtained after the date of filing may serve as evidence of the petitioner's continued activity in his field, it cannot be considered evidence that he had sustained national or international acclaim at the time of filing. Nevertheless, even if we were to accept the petitioner's CID membership, there is no evidence demonstrating that the organization requires outstanding achievements of its members.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner submitted newspaper articles promoting or reviewing performances by Bayanihan and Lahing Kayumanggi in local U.S. publications such as *gO!*, *The Filipino American Community Builder* and the *Milwaukee Journal Sentinel*;³ Taiwanese newspapers *The United Daily News* and *The Liberty Times* and Filipino publications such as the *Manila Bulletin*. The petitioner also submitted a translation of an article that apparently appeared in the *China Times* but the original foreign language document is not in the file. While the petitioner appears in some of the photographs accompanying the articles promoting or reviewing performances of Bayanihan, the petitioner is not mentioned by name in any of those articles. Counsel's assertion on appeal that the petitioner need not be mentioned by name in the published material because the record establishes that he performed with Bayanihan is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner. We are not persuaded that articles that are clearly about the dance troupe as a whole and do not mention the petitioner by name can be credibly considered "about" the petitioner himself. The petitioner is mentioned by name and sometimes quoted in the articles promoting or reviewing performances by Lahing Kayumanggi, but none of these articles can be said to be "about" the petitioner.

The petitioner also submitted a self-serving newsletter from [REDACTED] announcing that Radio Philippines Networks (RPN) had featured the group on a televised episode of "Tropang Pinoy" as part of National Arts Month. On appeal, counsel asserts that the show was broadcast nationwide. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that the documentary was broadcast nationwide. While the petitioner submits a translated transcript of an interview with the petitioner and his wife that was included in the episode of "Tropang Pinoy" featuring Lahing Kayumanggi and a video compact disc of the episode, a review of this evidence does not establish that the episode was broadcast nationwide.

In summary, none of the print media coverage of Bayanihan or Lahing Kayumanggi is "about" the petitioner. The petitioner has not established that the single interview of the petitioner was broadcast nationally. This single interview is simply not indicative of or consistent with sustained national or international acclaim and cannot serve to meet this criterion.

On motion, counsel states:

³ While the petitioner submitted evidence that the *Milwaukee Journal Sentinel* is "Wisconsin's largest and most influential newspaper" and that it covers world events, the petitioner did not submit evidence that the newspaper has a national circulation or any significant circulation beyond Wisconsin.

The AAO has determined that the print evidence in support of the Form I-140 does not establish that the print materials reference [the petitioner] specifically or consistent with national or international acclaim. This assessment is clearly in error, because the transcript documents specifically reference the significant role [the petitioner] has played in the development of the Lahing Ensemble and membership in the “world-famous” Bayahnihan.

* * *

Furthermore, the published materials provided establish that [the petitioner] is a featured individual in the major print media of the Filipino folk arts and culture community. Such publications reference his leadership role in multiple dance troops and his own abilities and accomplishments in the field. Of major significance is the published documentary of the Philippine television and radio network, RPN9. This documentary featured the cultural artistry of [the petitioner] and his dance ensemble, including the recognition of such group in national and international venues.

Counsel again misstates the AAO’s findings. The AAO concluded that the single televised RPN9 documentary interview from 2003 was “simply not indicative of or consistent with 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). Counsel’s motion does not address the AAO’s finding that there was no evidence showing that the interview was broadcast nationally. Further, the plain language of this regulatory criterion requires “published material about the alien” including “the title, date and author of the material.” A brief televised interview of the petitioner does not meet these requirements. With regard to the newspaper articles, the AAO found that they were about Bayanihan and Lahing Kayumanggi rather than the petitioner. In this case, there is no evidence showing that the petitioner has been the subject of articles in professional or major trade publications or some other form of major media.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel’s arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner’s evidence did not satisfy this criterion, the AAO’s appellate decision stated:

The petitioner claimed to meet this criterion through his research of Rondalla music and the establishment of the Lahing Kayumanggi Folk Arts Association, which includes a dance ensemble that performs locally and internationally (mostly at small ethnic festivals) with traditional costumes and music; a history, culture and arts library (a solitary bookshelf with a couch and table according to the photograph submitted); a center for the arts that provides

workshops and training and a three-year youth development program funded by the Philippine government. The petitioner submitted a self-serving profile of Lahing Kayumanggi, evidence of the group's organization and membership in CID, photocopies of sheet music allegedly "composed and/or arranged" by the petitioner, evidence that Lahing Kayumanggi students have demonstrated dance and other accomplishments and evidence of grants from the Philippine National Commission for Culture and the Arts (NCCA).

The director concluded that the only evidence of original contributions was the petitioner's cultural research into unpublished folk dances and that the record lacked evidence that the petitioner was recognized for this work.

On appeal, counsel asserts that the petitioner submitted sufficient evidence corroborating the significance of his cultural research. The petitioner submitted what are purported to be his notes describing the research and letters from individuals affirming that the petitioner visited their town and researched their culture traditions.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered an artistic contribution of major significance, it can be expected that the research would be demonstrably influential beyond the petitioner's own troupe. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The record lacks evidence that other Philippine folk dance troupes or cultural researchers frequently use the petitioner's small library. The record also lacks evidence that the petitioner's notes on local culture have been published or have otherwise influenced other folk groups in the Philippines such that the petitioner's compositions or arrangements are frequently performed by other groups.

The NCCA grants are also not persuasive. Government grants demonstrate that the government finds the proposed project worthwhile, not that the end results of the project constitute a contribution of major significance.

On motion, counsel states:

[The petitioner] has provided the Filipino folks arts and culture community with extensive research and original contributions, including choreography and composure of relevant folk dance and music. The collective information, including research notes, development of choreography and instruction demonstrates that [the petitioner] has been an instrumental participant in the continued development and exposure of Filipino folks arts and culture. The AAO must evaluate the collective nature of the developments [the petitioner] has performed, rather than isolating each factor and negating its importance. If the work and development is evaluated accurately, it would be reviewed as a collection of all the developments that [the petitioner] has introduced into the field.

Counsel's argument is not persuasive. We note that counsel does not specifically challenge the AAO's analysis for each of the original contributions claimed by the petitioner. The plain language of this regulatory criterion requires original artistic contributions of "major significance" in the field. The record lacks evidence demonstrating that the petitioner has made original contributions that have significantly influenced or impacted his field. Even in the aggregate, the evidence submitted by the petitioner does not establish that his original work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of artistic contributions of major significance.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The director concluded that the petitioner has established that he meets this criterion. The director's conclusion that the dance troupe founded by the petitioner has performed at festivals that showcase their art is supported by the record. Evidence submitted on appeal, however, casts some doubt on the significance of these festivals. Specifically, the episode of "Tropang Pinoy" that features Lahing Kayumanggi briefly shows the performance at Kimex 2000, which appears from the footage to be sparsely attended. Moreover, the petitioner previously submitted a photograph of himself performing at the Daley Center in Chicago. The petitioner is performing by a revolving door rather than on a dedicated stage. The nature of the performance area suggests that this "showcase" was not significant.

Regardless, the petitioner must demonstrate that these festivals were showcases of his art. We acknowledge the petitioner's claim to have composed the music used by Lahing Kayumanggi dancers. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The programs for Lahing Kayumanggi performances do not support the petitioner's claim. The petitioner is listed as the Founder and Music Director of Lahing Kayumanggi. No composer is listed, as would be expected of a showcase of original music, and the petitioner is not listed as a musician. Moreover, the petitioner has not resolved the apparent discrepancy between reviving unpublished folk music and composing original music. Thus, even if we were to conclude that the festival performances constitute displays at artistic exhibitions or showcases, they did not showcase the *petitioner's* compositions. That said, we acknowledge that the petitioner appears to have performed with the troupe. The record does not establish, however, that the small-scale dance performances accompanied by the petitioner

constitute showcases of the petitioner's art indicative of or consistent with his sustained national or international acclaim.

Finally, the petitioner asserts that the petitioner showcases and exhibits his work at Lahing Kayumanggi's cultural library. The statutory standard for the classification sought is national or international acclaim. Thus, the evidence submitted to meet any given criterion must be indicative of or consistent with national or international acclaim. Anyone can open a "cultural library" in their home or studio and thereby technically "display" their work. In order to meet this criterion, the exhibition or showcase must attract some type of national interest. As stated above, the photograph of the library consists of one bookshelf with a couch and table. A hand painted sign outside promotes the library. The record contains no evidence that any other folk dance researcher or expert outside of Lahing Kayumanggi performers ever visit this library. Without evidence that this library is frequently visited, we cannot conclude that it constitutes an exhibition or showcase of the petitioner's work.

On motion, counsel states:

The AAO assigns very little importance to the performance of [the petitioner] and his dance ensemble on behalf of the Filipino government and as cultural performers in prestigious national and international venues. The AAO decision questions the significance of the artistic venue or exhibitions. Regardless, as supported by the District Director, [the petitioner] has performed in multiple international destinations outside the Philippines, providing him the opportunity to expose his type of cultural and folk arts to others outside the Philippines. These artistic and exhibition shows are a manner in which [the petitioner] can demonstrate his extraordinary ability in his field.

Counsel does not specify the "prestigious national and international venues" to which he refers or point to evidence demonstrating their reputations as acclaimed music or dance venues. Further, we cannot conclude that having some national or international exposure is tantamount to earning sustained national or international acclaim in the performing arts.

Counsel further states:

The AAO suggests that in order for an artistic venue to qualify as one of the 10-point requirements, it must have an extensive audience and designated performance area. This is inconsistent with the statute that simply requires excellence in the field of endeavor. Requiring a specific artistic venue greatly reduces the number of eligible applicants, including many who would never be able to satisfy the requirement because their performances are in small-scale, limited venues. This is an unreasonable assertion, because there is nothing in the statute or regulations to suggest that Congress intended only a specific type of venue to qualify an application for EB-1 classification.

Counsel's arguments are not persuasive. Contrary to counsel's claim, nothing in the AAO's discussion required a "specific artistic venue." Rather, the issue was the significance of the petitioner's festivals

and performances. We agree with counsel that nothing in the statute or regulations requires a specific type of venue. However, we disagree with counsel's contention that a performing artist who attracts only a limited audience, performs in "small-scale" venues, or has no "designated performance area" automatically fulfills the restrictive statutory and regulatory requirements for classification as an alien of extraordinary ability. Further, counsel's observation that "the statute . . . simply requires excellence in the field of endeavor" is incorrect. Rather, the statute requires "sustained national or international acclaim" and achievements that "have been recognized in the field through extensive documentation." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i). In the performing arts, national or international acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial national or international audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's folk music and dance performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x).

Counsel further argues:

[The petitioner's] performance with the national Baynnihan and self-founded Lahing, are clear examples of public display of his artistry. He has personally composed, arranged, choreographed, and taught his style of art to multiple artists and in performances of the Bayanihan and Lahing. As an artistic director, composer and instructor, [the petitioner] has been instrumental in the artistic exhibition of Filipino folk art performances, including many examples of his own original work. The supplemental documents, initially filed and on apply [sic], reference such achievements. The failure of the AAO to review these documents as artistic exhibitions based on the limited audience or informal venue, clearly and unreasonable fails to consider the importance of the artistic exposure.

Counsel does not specifically identify the supplemental documents demonstrating that the petitioner composed original music used by the Lahing Kayumanggi dancers and the Bayanihan in their performances. Further, counsel does not address several of the AAO's appellate findings for this criterion. For example, the AAO stated that the programs for the performances of Lahing Kayumanggi do not support the petitioner's claim that he composed original music used by its dancers. As discussed in the appellate decision, the petitioner has not resolved the apparent discrepancy between reviving unpublished folk music and composing his own original music. Nor does counsel challenge the AAO's observations regarding Lahing Kayumanggi's cultural library.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner 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.

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The director acknowledged the distinguished reputation of the Bayanihan Philippine Dance Company. The director, however, concluded that the petitioner was one of several musicians and, thus, did not play a leading or critical role for the troupe. While the director accepted that the petitioner, as the founder of Lahing Kayumanggi, played a leading role for that group, the director questioned whether this group had a national distinguished reputation.

On appeal, counsel asserts that as the musical director for Bayanihan, the petitioner played a leading or critical role for Bayanihan. The petitioner submits a letter from [REDACTED] Technical Director for Bayanihan, asserting that the petitioner was the youngest "musical coordinator" for the group. The petitioner did not submit an organizational chart for Bayanihan. The fact that the petitioner was the youngest musical coordinator does not necessarily imply that the musical coordinator is a leading or critical role, especially in the absence of evidence as to the number of musical coordinators Bayanihan employs at any one time. We note that the petitioner's highest position in Bayanihan listed in any of the programs submitted is as one of two assistant music directors. Regardless, the petitioner left Bayanihan in 1999. Thus, his work with that troupe cannot be considered evidence of sustained acclaim six years later in 2005 when he filed the petition without evidence that any acclaim he may have enjoyed in 1999 continued through the date of filing.

We concur with the director that the petitioner plays a leading or critical role for Lahing Kayumanggi. The record establishes that Lahing Kayumanggi has performed at festivals in the Philippines and other countries, including the United States and Taiwan. Many of these performances, however, appear to be at minor venues such as high schools, colleges and a U.S. Postal Service Processing and Distribution Center. We acknowledge that Lahing Kayumanggi is reported to have performed at the Daley Center in Chicago and is listed as one of the "best Filipino Folk Dance and Music" groups to perform at the Sari-saring Sayaw Sama-samang Galaw Festival at the Cultural Center of the Philippines. While a local Chicago Filipino newspaper, the *Filipino-American Community Builder*, asserts that Lahing Kayumanggi performed at the Daley Center and was featured in the *Chicago Sun Times*, the photograph appearing in the *Chicago Sun Times* submitted by the petitioner from page 38 does not appear to be accompanied by a news story. Regardless, as stated above, the record does not suggest that performing at the Daley Center was a major event. The program lists the troupe as one of several cultural performers and the photograph from this performance shows the group performing next to a revolving door rather than on a dedicated stage.

We acknowledge that the Cultural Center of the Philippines promoted the festival featuring Lahing Kayumanggi as one of 15 of the "best Filipino Dance and Music" groups. This claim, however, is promotional and not supported by other evidence of record. We note that three of the other 15 groups listed on the promotional materials are high school groups.

While Lahing Kayumanggi has performed in a notable venue in the Philippines (where the group was promoted at the same level as the high school troupes also performing), we are not persuaded that its overall performance record demonstrates its nationally distinguished reputation. Rather, its performances appear commensurate with a moderately successful dance troupe that promotes a local culture through dance performances in the Philippines and at mostly ethnic festivals abroad.

In light of the above, we uphold the director's conclusion that the evidence falls short of meeting this criterion.

On motion, counsel states:

[The petitioner] was an active participant in the Bayanihan Philippine National Folk Dance Company, a long-standing and nationally acknowledged dance company for its cultural influence and international success. [The petitioner's] role as a Music Coordinator provided him the opportunity to develop and create original compositions, based on his research and experience with Filipino culture and music. He was also an integral part of the development and training of the dance company, and was a major participant in international performances, including performing before audiences in Asia, the Middle East, the United States, Europe and other foreign destinations.

Additionally, aside from his leadership and participation role in the national Bayanihan, [the petitioner] was the founding member of the Lahing Kayumanggi Folk Arts, Assn., Inc., an award winning Filipino cultural arts organization. His leading role in this nationally and internationally recognized organization in the artistic field of folk arts and Filipino music/dance, has served to elevate the importance of Filipino cultural arts and to provide exposure to this medium in national and international venues.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Rather, counsel simply repeats the petitioner's earlier claims regarding his eligibility for this criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet 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.

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner did not previously claim to meet this criterion. Rather, the petitioner submitted evidence of NCCA grants issued to Lahing Kayumanggi and the group's financial statements,

which do not reflect the petitioner's personal remuneration. Thus, the director concluded that the petitioner had not submitted evidence relating to this criterion.

On appeal, counsel asserts that the director should have considered the grants issued to Lahing Kayumanggi and the income of the group. Counsel also asserts that the petitioner is submitting tax returns demonstrating that "he and his wife reported a gross income of \$1,545,340 in 2002." The tax returns submitted, however, are those of Lahing Kayumanggi and do not include any information about the petitioner's personal remuneration from this group. Moreover, the figure of 1,545,340 pesos (not dollars as stated by counsel) constitutes the group's gross income. The group also reported expenses of 1,591,896.96 pesos, resulting in a net loss. Similarly, in 2003, the group also reported a net loss.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that "the alien" commanded a high salary or other remuneration for services in relation to others in the field. Thus, according to this plain language, the petitioner must demonstrate the remuneration he himself received and provide evidence that allows us to compare this remuneration with others in the field. The petitioner did not provide any of this required initial evidence.

On motion, counsel states:

[The petitioner] provided clear examples of his remuneration and financial success in his field of endeavor, having commanded a high salary for his performances and role as a director and choreographer of folks art dance and music.

* * *

[The petitioner's] commercial success and high remuneration are evidenced by his income, general ticket sales at performances and government/organizational sponsored grants. In a country that his a low [sic] wages, [the petitioner] has excelled in his field to such an extent that he collect [sic] a significantly higher remuneration, demonstrating his success and acclaim for work in his field.

As discussed, the plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has earned a high salary or other significantly high remuneration "in relation to others in the field." In this case, there is no reliable evidence of the petitioner's own high salary or high remuneration. For example, there is no evidence in the form of the petitioner's individual income tax returns or his Forms W-2, Wage and Tax Statements. Further, we cannot ignore that the petitioner has resided in the United States since October 2003 and that the record lacks evidence of his high income subsequent to his arrival in this country. The statute and regulations require the petitioner's national or international acclaim to be sustained. *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). Finally, the petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field while in the United States or in the Philippines.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

As stated above, the petitioner has submitted the financial statements of Lahing Kayumanggi for 2002 and 2003. These statements show ticket sales of 33,600 pesos in 2002 and of 430,460 pesos in 2003. The director concluded that 430,460 pesos are the equivalent of \$8,189.88 and that the record lacked evidence that this amount was indicative of commercial success even within the limited subfield of folk dance. On appeal, counsel does not challenge the director's statement that the ticket sales in 2003 amounted to only \$8,189.88. Rather, counsel asserts that this figure is consistent with commercial success in a country where the minimum wage is 167 pesos and 34 percent of the population lives below the poverty line.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without evidence of the range of ticket sales for the most prestigious dance companies in the Philippines, we cannot conclude that Lahing Kayumanggi's ticket sales are consistent with commercial success. We note that the group received far more money in grants and professional fees and still reported a net loss in both 2002 and 2003. It can be presumed that a dance company enjoying commercial success would not be reporting a net loss.

On motion, counsel states:

The AAO suggests it is imperative that it compare ticket sales of similarly situated dance groups in the Philippines to determine the success of [the petitioner's] own groups. However, this distorts the regulatory requirements and disregards arguments made on appeal. In reference to the comparison to be made with other dance groups, this requirements [sic] exceeds the regulatory language that requires only a showing of commercial success. The AAO tries to tie to unrelated regulatory requirements, on for the remuneration as relates [sic] to others and commercial success. The financial statements and reports provided demonstrate significant success in relation to the financial state of the Philippines. Although the AAO recognizes the significant wage rates in the Philippines, it fails to address how [the petitioner's] significantly higher rate of remuneration and demonstrative commercial success can not be extraordinary in light of such a low wage rate common to citizens of the Philippines.

[The petitioner's] commercial success and high remuneration are evidenced by his income, general ticket sales at performances and government/organizational sponsored grants. In a country that has a low [sic] wages, [the petitioner] has excelled in his field to such an extent that he collect a significantly higher remuneration, demonstrating his success and acclaim for work in his field.

Counsel does not specifically address the AAO's finding that Lahing Kayumanggi reported a net loss in both 2002 and 2003. We simply cannot conclude that such results are tantamount to "commercial successes" in the performing arts. Counsel instead focuses on the AAO's observation that the record lacked evidence showing the range of ticket sales for the most prestigious dance companies in the Philippines. Counsel argues that the AAO's reliance on such a basis for comparison "distorts the regulatory requirements" and imposes "unrelated regulatory requirements." Counsel further argues that "a low wage rate common to citizens of the Philippines" represents a more appropriate basis for comparison. We reject this argument. The plain language of this regulatory criterion requires evidence of "commercial successes in the performing arts" in the form of "receipts" or "sales." Accordingly, counsel's argument that USCIS should rely upon a wage rate for the general population of the Philippines as a basis for comparison is not supported by the regulation. The burden is on the petitioner to demonstrate that the levels of ticket sales for his company's performances were indicative of "commercial successes" and consistent with sustained national or international acclaim at the very top of his field.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed previous counsel's arguments and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

In this case, we concur with the director's determination and our appellate findings that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The AAO's April 17, 2008 decision dismissing the appeal is affirmed. The petition will remain denied.