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

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U.S. Citizenship
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Services

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FILE:

[REDACTED]
LIN 06 273 53079

Office: NEBRASKA SERVICE CENTER

Date:

MAY 28 2009

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

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

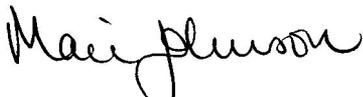
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 has 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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a digital media artist. 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 of the criteria outlined in 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 filed her Form I-140, Immigrant Petition for Alien Worker, on September 25, 2006, and indicated that she sought immigrant status as an alien of extraordinary ability pursuant to 8 C.F.R. § 203(b)(1)(A). Her accompanying letter, however, addressed the requirements for an alien seeking nonimmigrant status as an alien of extraordinary ability under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(ii), under which the petitioner had been previously approved.

However, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record. Moreover, 8 C.F.R. § 214.2(o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides for entirely different criteria than those for the immigrant classification discussed below. Thus, the petitioner could meet the nonimmigrant criteria and not the ones necessary for immigrant classification.

While the U.S. Citizenship and Immigration Services (USCIS) has approved the petitioner’s O-1 nonimmigrant visa petition, that 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 the beneficiary’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 has approved a

nonimmigrant petition 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).

Following the director's request for evidence (RFE) issued on May 31, 2007, the petitioner responded with additional documentation and with claims that she meets the following criteria, as outlined in 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner submitted documentation reflecting that she had received the inaugural Anglo-Israeli Photographic Award, now the Multi Exposure Award, in 1993. In an April 20, 2004 letter submitted with the petition, [REDACTED] who identified herself as the director and trustee of Multi Exposure, stated that she founded the organization in 1993 and that it "is a non-profit organization that promotes cultural exchange between Israel and the United Kingdom." She further stated that the organization promotes "cultural and artistic exchange between Britain and Israeli artists, enabling artists to spend a month in each other's countries in order to produce a body of work for exhibition." While the petitioner's documentation reflects that participants in this program are selected through an open competition for artists from Israel and Britain, this does not automatically elevate the recognition received at the event to one that is recognized nationally or internationally as denoting excellence in the field. The petitioner submitted no documentation to reflect that an award by Multi Exposure is a national or internationally recognized award of excellence in her field of endeavor.

The petitioner also submitted an April 22, 2004 letter from [REDACTED] who stated that she was an art critic and free-lance curator and that she was a member of a juried committee that awarded the Young Artists' Prize to the petitioner in 1996 on behalf of the Israeli government. [REDACTED] stated, "This prize is a merit award of considerable significance in Israel given to working artists under the age of 35 years old, who have produced work which is consistently of the highest standard" and "given to artists who have earned the acknowledgment and respect of their communities through excellence and continuous hard work." The petitioner submitted no documentation to confirm [REDACTED] statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner also submitted a copy of a certificate indicating that she received "The Young Artist Prize' in Plastic [Visual] Arts For 1996." Although the prize is awarded by the Israeli government, it is not clear that it is a prize or award for excellence in the petitioner's field of endeavor. A copy of an article from the January-February 1997 issue of *Israeli Art Magazine* indicates that the purpose of the prize was to encourage creativity.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Furthermore, the petitioner has not established that receipt of a “Young Artist Prize in Plastic [Visual] Arts in a competition restricted to artists aged 35 and younger is an indications that she “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals of a certain age who may be progressing toward the top at some unspecified future time. The evidence submitted is insufficient to establish that the Young Artists Prize is a nationally recognized award for excellence in the petitioner’s field of endeavor.

The petitioner also claims to meet this criterion based on a 2007 receipt of the Pathogeographies Award Commission granted by the University of Chicago Arts Planning Council and Free Tank Chicago. However, even if this award was evidence of this criterion, it was presented after the filing date of the petition on September 25, 2006. 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); 8 C.F.R. § 103.2(b)(12). Accordingly, the petitioner’s receipt of an award in 2007 is not evidence of her sustained acclaim and of her eligibility for visa classification for purposes of this petition.

The petitioner also claims to meet this criterion based on her selection as a panelist at the 2005 annual conference of the College Arts Association (CAA). In a May 1, 2006 letter, [REDACTED] of the Department of Art at the University of Kentucky stated:

CAA offers a limited selection of panels and exhibition at its annual international conference. Panelists are selected from around the world; the selection process is highly competitive. Professional artists and critics are chosen for panels based on the outstanding quality of their work, their reputation and the excellence of their field.

[REDACTED] stated that the petitioner was invited to present her video work at the panel and to open the session. [REDACTED] stated that it was “gratifying to see the audience share our enthusiasm” for the petitioner’s work and that she was “unsurprised” at the warm reception received by the petitioner. However, the petitioner submitted no documentation to establish that presenting her work at the annual conference of CAA is nationally or internationally recognized as an award of excellence in her field.

On appeal, the petitioner submits a September 25, 2007 letter from [REDACTED] president of The New Media Caucus of CAA, stating:

The field of new media art is still relative new and evolving and as such there is not yet an established national (United States) or international awards program that honors those artists who have risen to the pinnacle of new media and who are making the most significant contributions.

█ did not identify any national or international awards program that recognizes those in new media art.

The petitioner has failed to establish that she meets this criterion.

Published materials 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted copies of articles about herself or her work that appeared in the January 14, 1994 edition of *Ha'ir*, the March-April 1996 edition of *Studio*, the March 10, 1996 edition of *Plastic [Visual] Art*, the March 1996 edition of *Four by Five*, the April 3, 1996 edition of *Ha'ir*, the July-August 1997 edition of *Studio*, and the December 2004/January 2005 edition of *Artweek*. The petitioner also submitted an article that appeared in the July 2007 issue of *Slash Seconds*. As the latter article was after the petition was filed on September 25, 2006, it is not evidence of the petitioner's eligibility for this visa petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49.

According to documentation from *Studio*, the publication "is a bi-monthly, non profit, visual arts magazine published since 1987; considered Israel's foremost visual arts review." The documentation indicates that the magazine is "distributed in Israel's major museums, art galleries, books and fashion stores as well as sent to a vast international mailing list of major curators, Galleries and Museums." The petitioner submitted no other documentation confirming that *Studio* magazine is "considered Israel's foremost visual arts review" and no evidence of the magazine's distribution. Without supporting documentary evidence, the petitioner cannot meet her burden of proof. *Matter of Soffici*, 22 I&N Dec. at 165.

Documentation submitted from the *Artweek* website indicates that the magazine has "[l]ong [been] recognized as the national voice of contemporary art on the West Coast." On appeal, the petitioner submits a copy of a September 25, 2007 letter from █ the graduate writing coordinator for the New School for Social Research, in which she repeats the language from *Artweek*'s website, and further states that the magazine has a readership in excess of 50,000, that universities throughout the United States subscribe to the publication, and that it is distributed in art centers, bookstores and specialty art centers. Doctor Monroe states:

Artweek is one of the most respected and widely recognized national arts journals to have been published in the U.S.; it is a major, national publication among the small number of national publications of standing that specialize in a specific region of the United States, with national subscription and circulation. These publications allow curators, specialists, academics and artists to fully comprehend the breadth of professional art activities and artists at the top of the field throughout the United States. *Artweek* holds a unique position in print publications and has great respect because of its longevity, quality and sustained international audience.

Doctor Monroe does not reveal the source of her information regarding *Artweek's* readership and distribution; however, she states that she has "a great deal of experience with professional publications in the fields of cultural criticism, art and writing." Assuming that *Artweek* is a major trade publication, the petitioner submitted only one article from that publication.

While the articles that appeared in *Ha'ir* and *Plastic [Visual] Art* are about the petitioner or her work, the petitioner failed to submit evidence to establish that these publications are major media or major trade publications.

The petitioner also submitted a copy of an article titled "Here, There, Everywhere." The document is not dated and does not show the publication in which it appeared. The record contains a copy of a forwarded e-mail from [REDACTED], who identified herself as "co-founder," presumably of [REDACTED] "an on line publication that focuses on new and cutting edge contemporary art," that "spend[s] time exploring our special artists projects." [REDACTED] stated, "In 2005, Stretcher invited Psychological Prosthetics to be one of these project[s], where an article about the project, "Here, there, Everywhere" was on the home page of [REDACTED] between July-November 2005." However, the document submitted by the petitioner contains no indication that it appeared on the website, and the petitioner submitted no other evidence that the article appeared as stated by [REDACTED] *See id.*

[REDACTED] alleges that stretcher.org "has an average of 5,000 individual viewers per week." However, there is no documentary evidence to support her statement. Further, while Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. Anyone can create a website and post articles. The mere act of posting an article online does not transform what is otherwise a local publication into major media. The record lacks evidence that stretcher.org routinely attracts national or international attention.

Additionally, the Act requires that the petitioner to establish sustained acclaim through extensive documentation. The documentation submitted by the petitioner prior to the one article in the December 2004/January 2005 edition of *Artweek* was published in 1994, 1996 and 1997. The minimum documentation provided as evidence during the period prior to the filing of the petition in September 2006 is not sufficient evidence of the sustained acclaim required by this criterion.

The evidence does not establish that the petitioner meets this criterion.

The petitioner also submitted documentation about an article published by the petitioner. However, articles published by the petitioner are not articles about the petitioner or her work. Published articles by the petitioner are considered under a separate criterion. However, the petitioner does not allege that her single article in *Media-N* is sufficient evidence to establish that she meets that 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.

In her August 20, 2007 letter accompanying the petitioner's response to the RFE, counsel stated:

[The petitioner] was chosen to work with the LAB as a judge and curator of the LAB's video screening program in 2006. The LAB is the oldest non-profit institution in the San Francisco Bay Area and has a stellar reputation for producing cutting edge art programming and exhibits. In her role [as] a judge and curator, [the petitioner] was responsible for executing a call for art entries to artists throughout the world. [The petitioner] was solely responsible for reviewing resumes, screening each video submission, and selecting the top artists suitable for the content of the two artistic programs of which she served as curator.

The petitioner submitted a July 17, 2007 letter addressed to her from The Lab and signed by [REDACTED] as president of the board. The letter thanks the petitioner for her "generous contributions" to the organization, states that "Your role as an expert judge and curator has enhanced our programming considerably," and that:

When we first invited you to be the judge and curator of our video screening program in 2006, we did not imagine what a success this would turn out to be! It is no secret that our board chose you from among the nations leading new media artists in the field to be the sole judge for this event, based on your sterling international reputation within the video and new media community . . . The first event you judged for the LAB, "Road Movies" featured the work of contemporary artists from around the globe, specifically chosen by you for this program, dealing with a classical cinematic theme in new ways and technologies. "Stranger than Fiction", the second program you judged and curated pushed the boundaries of documentary tradition, featuring new media work and performance based acts in video . . . Thank you for taking the time as our sole judge to review each resume, then watch each video submission, and select the top artists suitable to the content of your curatorial vision for each event.

The petitioner submitted a copy of a flyer indicating that she was the curator of "Stranger than Fiction," which was showing at The LAB on July 19, 2006. The petitioner also submitted a July

29, 2007 letter from the Israeli Center for Digital Art signed by [REDACTED] as the video archive manager, indicating that in July 2006, the petitioner was asked to select a program for inclusion in the organization's "The Archive" exhibition.

The petitioner provided an August 2, 2007 letter from the Associate Director of the Charlotte Street Foundation, inviting her to "further develop" the organization's Urban Culture Project. We note first that the petitioner submitted no documentation that she accepted this invitation and second that, even if she had, the invitation occurred subsequent to the filing of the visa petition. Accordingly, it is not evidence of the petitioner's sustained acclaim prior to the filing of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner's documentation indicates that she acted as a judge and curator only in 2006, the same year that she filed her petition. Three acts as a judge, occurring within a few months of the filing date of the petition, is not evidence of the sustained acclaim required by the statute and regulation.

The evidence does not establish that the petitioner meets this criterion.

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

To establish that she meets this criterion, the petitioner submitted "letters of recommendation from veteran artists, top academicians, art critics, and other high-ranking art professionals" (more than 65, according to counsel) who attest to her extraordinary ability as a new media artist. These individuals describe the petitioner as "innovative," "a pioneer," "an important figure in the New Media field," and "unique." [REDACTED], an associate professor in the University of Southern California's Gayle Garner Roski School of Fine Arts, stated that in her "ground breaking work *Letters to An Unknown Friend*" the petitioner "invented a machine that allowed visitors to add to and alter the artwork during the exhibition" and that "This unique example of [the petitioner's] new media work is pioneering because it allows the audience to make their own stories a part of the work." [REDACTED] further stated that the petitioner's "unique ability to bring her audience into the work has had a great impact in the field." Nonetheless, [REDACTED] does not state how the field has adopted and used the petitioner's work or techniques such that it can be determined that it "has had a great impact in the field."

[REDACTED], a professional artist, states that the petitioner's "extraordinary talent lies in her unique ability to blend new and old technologies," and that "This blending of familiar objects from the past and present day technology is a signature" of her work "and an example of her unique talent." [REDACTED], a senior faculty member at Bezalel Academy of Art and Design, states that the petitioner "has carved a niche for herself in the U.S. as a leader in the field of new media art, and she is playing a key role in shaping the future direction of the field."

[REDACTED], the director of the Tang Museum at Skidmore College, states that the petitioner's "singular talent lies in her use of the cultural artifact." He further states, "She works with

everyday objects and places: all the things of everyday life that we take for granted She takes these objects and makes us see them and the world around us entirely differently.” [REDACTED] Darraby, an attorney and former art gallery owner, opines that the petitioner “offers a significant contribution to the field of new media art, and to the contemporary cultural discourse.” She states:

I consider [the petitioner] to be a significant artist in the field of new media, particularly the area of digital art. New Genre arts practices, such Digital Media are a vital cutting edge genre in contemporary art practice. Exhibition venues range from screenings; (projection-based events) in museums and alternative spaces, live and web-streamed events in public spaces (interventions,) to exhibitions in prestigious galleries, art spaces and international art collections, which may also simultaneously appear on-line. This type of work is of great significance to new art expression in a democratic society. [Her] creative endeavors in this area are significant.

None of the writers, however, provide any information as to how the petitioner’s “creative endeavors” have influenced others in her field.

director of Digital Arts & Multimedia Design at LaSalle University, states:

What makes [the petitioner] an artist of such tremendous talent is her groundbreaking approach to the viewer and the subject of her work. Her photographic work for *Multi Exposure* in the early 1990’s first revealed this innovative approach, specifically her handling of the relationship to the viewer. She broke the established rules of documentary photography by placing herself within the photographic image and empowering the subjects of her photographs. This practice of relinquishing the power to the audience and allowing them to work with her in taking the photograph has become, since that time, a commonly used device within documentary photography.

[The petitioner] is at the forefront of this type of new media artwork that moves art work beyond the gallery walls, into public places and onto the Internet. This expanded exhibition practice currently is a major focus in cutting edge contemporary work.

[REDACTED], the director of Boston Cyberarts, Inc., states, “A salient aspect of her work is combining new technologies and performance in forging a new form of public art,” and that “This work is important in the future of public art that incorporates audience interactivity.” William Horrigan, director of media arts at Wexner Center for the Arts at Ohio State University, stated that the petitioner’s “approach to new media is distinctly her own.”

As noted, the petitioner submitted numerous letters attesting to her ability as an artist. While many of those writing letters on behalf of the petitioner indicate that her work is unique, we note that only [REDACTED] and [REDACTED] suggest that her work has influenced others. The petitioner submitted no other documentation to corroborate the opinions of [REDACTED] and [REDACTED] and no other evidence in the record supports their conclusions. Further, the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for “extensive documentation” in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

The evidence submitted does not establish that the petitioner meets this criterion.

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

In her August 20, 2007 letter accompanying the petitioner’s response to the RFE, counsel asserts that the petitioner’s work has been displayed in more than 200 exhibits. Many of those writing letters on behalf of the petitioner also reference exhibitions in which her works have appeared. However, most do not provide specifics as to when and where these exhibitions took place or the writer’s knowledge of those exhibitions. For example, [REDACTED] stated in a May 18, 2006 letter that he became familiar with the petitioner’s project “Psychological Prosthetics” in 2005 and that the work was exhibited in the United States, Europe and Israel. However, he does not state the locations of these exhibitions and the basis of his knowledge of the exhibitions. [REDACTED] director of the Shelburne Museum, stated in a May 25, 2006 letter that he viewed the screening of the petitioner’s work “Everything I Knew About America I learned from the Movies” in 2002. [REDACTED] did not state where this screening took place. The uncorroborated statements of these individuals are not sufficient to meet the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165. The record also contains documentation that offers a compilation of the petitioner’s work, including a description of each project, exhibitions, press, publication, and other information. However, these documents are not dated, do not indicate their source, or who was responsible for compiling the information.

The record contains the following specific information about the display of the petitioner’s work:

1. A June 9, 2006 letter from [REDACTED], an assistant professor at the University of California Santa Cruz, who stated that he was a contributing writer and editor for *Stretcher*, a visual culture magazine, and that in 2005, the magazine “was invited to be part of a prestigious triennial exhibition at the Yerba Buena Center for the Arts in San Francisco, California. [The petitioner’s] project Psychological Prosthetics was chosen as a feature project to be reviewed and presented by *Stretcher* as a part of the exhibition.”
2. A copy of a press release announcing the “performance artwork” of Psychological Prosthetics Valise at the Berkley Art Museum on June 23, 2005.

3. An article from the December 2004/January 2005 edition of *Artweek* about the petitioner's exhibition "Just like in the Movies" at the Austin Law group on December 30.
4. An April 12, 2004 letter from [REDACTED] in which she stated that the petitioner was scheduled to participate in an exhibition, Sacred Spaces, that [REDACTED] was curating that was scheduled to be exhibited during the summer of 2004. The petitioner submitted no documentation indicating that this exhibition was performed as planned.
5. A May 1, 2006 letter from [REDACTED], the director of the Memorial Union Art Gallery at the University of California, Davis, in which she stated that she attended an **exhibition of the petitioner's work** "Letter to an Unknown Friend" during the summer of 2004, and that, at her invitation, the petitioner exhibited her work at the Memorial Union Art Gallery in January 2006.
6. An April 20, 2004 letter from [REDACTED] a writer and filmmaker, in which she stated that she had invited the petitioner to participate in a show that [REDACTED] was curating called *Between's*, which was to be presented on October 15, 2004. However, the petitioner submitted no documentation that she actually participated in the show.
7. An April 23, 2004 letter from [REDACTED] the gallery director for Olive Hyde Art Gallery in Fremont, California. [REDACTED] stated that the petitioner participated in an exhibition, "Family Unit," at the gallery. [REDACTED] did not state when this event occurred. A newspaper article about the exhibit does not contain a date or a publication name; however, a handwritten annotation indicates that the article appeared in "Argus" on April 7, 2003.
8. A copy of a June 22, 2002 "Calendar" section from the *Los Angeles Times*, indicating that a photograph by the petitioner appeared in an exhibition at the UCLA Fowler Museum of Cultural History. A page from the museum's website indicated that the exhibit appeared from May 19, 2002 to July 14, 2002.
9. In a May 9, 2004 letter, [REDACTED], Senior Curator of Photography, at the Israel Museum, Jerusalem, stated that the petitioner's work was included in an "innovative catalogue" that was a "CD illustration of the work of the participating artists," that her work was also included in a 2000 "major historic exhibition titled Time Frame: A Century of Photography in the Land of Israel," and that the museum had acquired two of the petitioner's works "for inclusion in its permanent collection, and those works have been exhibited within the framework featuring recent acquisitions."
10. A November 4, 2004 letter from [REDACTED], an artist and educator at the Hamidrasha School of Art, in which she stated that in 1997, the petitioner presented an exhibition of her work "Look & Listen. Say that" at the school. The exhibition was also

reviewed and reported in the July-August 1997 edition of *Studio*, the Israeli Art Magazine.

11. A copy of an April 3, 1996 article from *Ha'ir*, reviewing the petitioner's exhibition Pins and Needles at the gallery Camera Obscura.
12. A March 8, 1996 article from [REDACTED], indicating that the petitioner's exhibition "where I'm calling from," would open at the Camera Obscura Gallery in Tel Aviv and run from March 13 to April 3. This exhibition was also reported in April-May 1996 edition of *Studio* and the March 21, 1996 edition of *Iton Tel Aviv*.

The evidence indicates that the petitioner's work has consistently appeared in exhibitions, and that the evidence is sufficient to establish that she meets this criterion.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.*" [Emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. In her letter accompanying the petitioner's response to the RFE, counsel states:

Although the majority of the 10 standards listed in the regulations for determining "sustained national and international acclaim have been met by the beneficiary, the petitioner/beneficiary would like to add an additional item that shows she continues to receive invitations to exhibit her work and participate in major artistic endeavors as an artist of extraordinary abilities.

The petitioner submitted several letters of invitation to present or lecture about her work. However, as these invitations are for events occurring subsequent to the filing date of the petition, none are relevant in determining the petitioner's sustained acclaim for purpose of this visa petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of her field of endeavor.

The evidence of record, however, does not establish that the petitioner has distinguished herself as a digital media artist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is an artist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.