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



U.S. Citizenship and Immigration Services

B₂

[Redacted]

FILE: [Redacted] SRC 08 017 50124

Office: TEXAS SERVICE CENTER Date: NOV 23 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[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).

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

U.S. Citizenship and Immigration Services (USCIS) and the legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (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 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.

The record reflects that the petitioner has been previously approved as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). While USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, 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).

Although the words "extraordinary ability" are used in the Act for both the nonimmigrant O-1 classification and the first preference employment-based immigrant classification, the applicable regulations define the terms differently for each classification. The O-1 regulation explicitly states that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear regulatory distinction between these two classifications, the beneficiary's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

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).

This petition, filed on October 20, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a media editor. 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 has submitted evidence that, he claims, meets the following criteria under 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 claims to meet this criterion based on his receipt of two Promax Awards in 2001 and six Telly Awards in 2006. The director determined that the petitioner meets this criterion. However, we do not concur and withdraw this determination by the director. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

1. The Promax Awards. The petitioner submitted documentation indicating that at the 2001 Promax Asia Awards, the Promax Gold Award was presented to Star India Pvt. Ltd. for Kaun Banega Crorepati – "Stranger" and the Silver Award was presented to the organization for Kaun Banega Crorepati – "Wedding," both in the "Best Infotainment/Lifestyle Promo" category. Documentation submitted by the petitioner indicates that he received the awards for editing.

The petitioner submitted information regarding the 2007 Promax Awards from the Promax/BDA website. The documentation indicates that "PROMAX is the international association of promotion and marketing professionals in the electronic media, dedicated to advancing the role and increasing the effectiveness of promotion and marketing industry, related industries and the

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

academic community.” The documentation further reflects that the “PROMAX Awards are presented to companies and individuals whose work is judged by a panel of promotion and marketing professionals to be of exceptional quality as well as accomplished specific marketing results.” The petitioner submitted additional promotional material from the Promax but no additional documentation regarding the awards.

The petitioner provided copies of December 4, 2001 letters from [REDACTED] senior executive producer of on-air promotions for Star India Pvt. Ltd., in which he certified the petitioner’s service as editor on the Kaun Banega Crorepati Promotional Campaigns that won the Promax Asia Gold Award for “Stranger” and the Promax Asia Silver for “Wedding.”

In response to the director’s request for evidence (RFE) dated June 12, 2008, the petitioner submitted photographs of his Promax Awards. The petitioner also submitted a page from the website of Promax/BDA, accessed by the petitioner on August 5, 2008, indicating that Star (India) Pvt. Ltd. won awards in the category of “Best Infotainment/Lifestyle Promo.” The list of winners on the website does not include individuals.

With a previously submitted Form I-140 petition (LIN 07 146 51884), the petitioner submitted documentation from the Promax/BDA website, accessed by the petitioner on May 9, 2006. The documentation indicated that Star (India) Pvt. Ltd. won with two entries in the “Best Infotainment/Lifestyle Promo” category and that an individual could order a duplicate but personalized award for any entry won by the company as long as the individual was listed in the credits for the entry.

The documentation of record sufficiently establishes that the petitioner was the winner of a Promax Gold Award in 2001. However, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the awards be nationally or internationally *recognized* in the field of endeavor and it is the petitioner’s burden to establish every element of this criterion. In this case, there is no evidence showing that the Promax Awards commanded a significant level of recognition beyond the context of the events where they were presented. For example, there is no evidence showing that the Promax Awards were announced in major media or in some other manner consistent with national or international acclaim.

2. The Telly Awards. With the petition, the petitioner submitted photocopies of documents indicating that he was a silver winner and a five times bronze winner for editing at the 27th Annual Telly Awards in 2006. The petitioner also submitted a partial copy of a fact sheet about the 27th Annual Telly Awards, apparently from the organization sponsoring the event. The fact sheet indicates that it should help the organization “in publicizing [its] achievement.” The petitioner also submitted a copy of a press release from the organization.

In response to the RFE, the petitioner submitted additional documentation from the Telly Awards website and information retrieved from the user-edited online encyclopedia *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content

from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

As with the Promax Awards, the petitioner submitted no evidence showing that the Telly Awards commanded a significant level of recognition beyond the context of the events where they were presented. The petitioner submitted no documentation that the recipients of Telly Awards are announced in major media or in some other manner consistent with national or international acclaim. According to documentation from the Telly Awards website, accessed by the petitioner on August 5, 2008, “[t]he Telly Awards was founded in 1978 to honor excellence in local, regional and cable TV commercials.” The evidence does not establish that the Telly Awards are nationally or internationally recognized as awards of excellence in the petitioner’s field.

Also in response to the RFE, the petitioner submitted photographs of eleven Telly Awards, indicating that he won six awards in 2006 and five in 2008. 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. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petition was filed on October 20, 2007. Therefore, any awards won by the petitioner in 2008 cannot establish his eligibility for this immigrant visa classification.

We note that in his July 24, 2007 denial of the prior petition, the Director, Nebraska Service Center, advised the petitioner that the Telly Awards website did not support the petitioner’s claim that he won the six awards. According to the director, the website indicates only that the petitioner won two Bronze awards in 2006. The AAO’s review of the Telly Awards website, accessed on September 22, 2009,³ also fails to substantiate the petitioner’s receipt of any other Telly Award in 2006.

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. [Emphasis in the original.]

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on September 28, 2009, a copy of which is incorporated into the record of proceeding.

³ www.tellyawards.com, a copy of which is incorporated into the record.

However, while the evidence is sufficient to establish that the petitioner won two Telly Awards in 2006, the petitioner has failed to establish that the Telly Awards are nationally or internationally recognized prizes or award for excellence in his field. Accordingly, the petitioner has failed to establish that he meets this criterion.

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

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In his initial submission, the petitioner claimed to meet this criterion based on his membership in the Association of Film Editors (AFE). The petitioner submitted a copy of membership card in the AFE; however, the document is a poor copy that if it contains the name of the member, it is not legible. The petitioner also provided a copy of a document certifying his membership in the organization, purportedly signed by its president on October 27, 1998. In an August 9, 2006 letter, [REDACTED] who identified himself as a chief executive officer and producer in motion TV production, stated that the petitioner was "selected to join" the AFE in "recognition of his extraordinary abilities as a film and video editor." However, the membership requirements for the AFE provided by the petitioner indicate only that the prospective member must provide certain documents including letters, educational certificates and technical educational requirements. There is nothing in the requirements however to indicate that the AFE requires outstanding achievements of its members as judged by national or international experts..

In response to the RFE, the petitioner abandoned any discussion of the AFE and instead claimed to meet this criterion through his membership in the Academy of Television Arts and Sciences (ATAS). The petitioner submitted a "welcome" notice from the ATAS website, accessed by the petitioner on July 29, 2008, and indicating that his peer group was "nonfiction programming." The notice indicated that the petitioner was a national active member and that his membership expired on July 31, 2009. The petitioner did not submit a copy of his membership card in the ATAS; however, the evidence indicates that the petitioner joined the organization after he filed his petition on October 20, 2007. Therefore, his membership in the organization cannot be used to establish his eligibility for this criterion. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Even if the petitioner can establish that he was a member of the ATAS prior to filing his petition, he has not established that the ATAS requires outstanding achievements of its members. According to the documentation submitted by the petitioner, active membership in the non-fiction programming category of the ATAS requires that the applicant has “[p]rimary professional function and on-air credits in the area of television documentary, informational or other nonfiction programming at the national level.”

On appeal, counsel argues that membership in the organization requires that the applicant have “creative input” during his tenure as an editor and that this is a “test” that demonstrates “outstanding achievement.” Counsel then enumerates the evidence provided that he states demonstrates the petitioner’s outstanding achievements. However, “creative input” is not necessarily synonymous with “outstanding achievement.” The ATAS does not define the “creative input” necessary for membership in its non-fiction programming category and the petitioner submitted no other documentation to indicate that the ATAS has limited membership in this category to those who have demonstrated outstanding achievement.

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

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

The petitioner initially claimed to meet this criterion based on his work with imaginasiantv and MTV. He submitted copies of letters from [REDACTED] of Programming & Production for imaginasiantv, in which he indicated that the petitioner had acted as a consultant to the organization on several projects. In his May 17, 2007 letter, [REDACTED] stated that the petitioner served as an adviser to the editing staff and was a great mentor. The petitioner also submitted copies of letters from [REDACTED] an executive producer with MTV World. [REDACTED] also described the petitioner as a consultant with the company and indicated that the petitioner was asked to review the company’s “entire post-production process.”

Duties or activities that nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. The petitioner provided no documentation to establish that acting as a consultant or an adviser with imaginasiantv and MTV involved more than the routine evaluation of those with whom he worked. *See Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) (internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot meet this criterion).

The petitioner did not pursue this position in response to the RFE, instead asserting that he meets this criterion based on his membership in the ATAS. The documentation from the ATAS website indicates that the petitioner registered as a judge for two panels, Picture Editing for Reality Programming and Sound Editing for Nonfiction Programming. The documentation does not demonstrate that the petitioner had actually served as a judge in any capacity for the ATAS.

Furthermore, as previously discussed and as noted by the director, the petitioner has not established the date of his membership in the ATAS. The documentation suggests that his membership dates after the filing of his visa petition, and therefore any participation on a panel with ATAS would have occurred subsequent to the filing date of his petition and would not qualify him for this criterion. *See* 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner does not pursue this issue on appeal. The petitioner has failed to establish that he meets this criterion.

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

The petitioner submitted several letters of reference that counsel, in his letter accompanying the petitioner's initial submission, stated were evidence of the petitioner's "contributions to the companies he has worked for." It must be emphasized that the criterion at 8 C.F.R. § 204.5(h)(3)(v) requires the alien to demonstrate an original contribution of major significance to the field. The letters of reference provided by the petitioner describe specific projects but do not identify any contributions of major significance that he made to his field of endeavor. For example, in a February 8, 2007 letter, [REDACTED] of MTV World, stated:

[The petitioner] stands as one of the best film and video editors I have come across in my career. His uncanny ability to adapt the project to the creative inspirations of directors has often left me astounded. It comes as no surprise that he has been awarded a multitude of awards, including the renowned Telly Award, for his work in the past. His significant contributions to the field continue to grow.

However, [REDACTED] did not specify any significant contributions that the petitioner made to his field.

[REDACTED] for MTV Desi, stated in a September 11, 2006 letter that the petitioner "is a skilled and highly acclaimed film and video editor who has made contributions to the film industry through his encyclopedic knowledge of his craft and creative vision." Nonetheless, [REDACTED] did not identify the petitioner's contributions or contend that they were of major contribution to the petitioner's field.

In response to the RFE, the petitioner submitted additional letters of reference, including letters from [REDACTED] for ESPN, [REDACTED] of MTV News, [REDACTED] an on-air correspondent for the MTV Networks, and [REDACTED] of MTV News. All attest to the petitioner's skill and success as a film and video editor. None specify any contributions of major significance that the petitioner has made to his field of endeavor. It should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for prizes, critical or

leading roles, and commercial success, USCIS does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Those submitting letters on the petitioner's behalf write of the petitioner's awards, which have been discussed under the criterion listed at 8 C.F.R. § 204.5(h)(3)(i), his critical role in particular organizations, which will be discussed under the criterion listed at 8 C.F.R. § 204.5(h)(3)(vii), and the number of people who have viewed his work, which is more akin to evidence of commercial success, which will be discussed under the criterion listed at 8 C.F.R. § 204.5(h)(3)(x).

On appeal, counsel asserts that the director "goes beyond the scope of the federal regulations" when he stated that "the record contains no evidence that the alien's work made a significant contribution to the world of film editing such that others emulate his style." Counsel further stated:

Neither the INA nor the Code of Federal Regulations requires that emulation is demonstrative of significant contributions. The fact that [the petitioner] has been [sic] received awards for his work on numerous occasions combined with the number of viewers who have played his videos certainly satisfies 8 C.F.R. § 204.5(h)(3)(v).

While counsel is correct that emulation is not a requirement of the statute or regulation, it is clear that the director used the term to explain how the petitioner could establish a contribution of major significance to the field. Counsel's assertion that the petitioner has received awards for his work or that numerous people have viewed his videos offers no explanation as to how success or recognition on specific projects constitute a contribution of major significance to the field.

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

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

In the initial submission, counsel asserted that the petitioner's work had been "showcased on many occasions on such channels [as] Star India, ImaginAsian Television [and] MTV." As the director correctly stated, the plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to film or video editors like the petitioner. It is inherent to film editing for the work to be seen. Therefore, not every production is a showcase or exhibition of the work of media editor. Without evidence that the petitioner's work is comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion. The petitioner did not address this issue further in response to the RFE or on appeal.

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

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

In his letter accompanying the petition, counsel stated that the petitioner meets this criterion based on his employment with Rahbani Productions. The petitioner provided a June 2, 2005 statement from [REDACTED] of Rahbani Productions, who certified that the petitioner had worked for the company as a senior editor from March 2003 to February 2005.

To establish Rahbani Productions as a company with a distinguished reputation, the petitioner submitted a July 14, 2002 press release from the company announcing its introduction of a “revolutionary T-Rex Superscope lens system” and a March 18, 2003 press release indicating that the company was entering into a strategic partnership with F.E.G. Malaysia. A press release is a company’s self-promotion and is not evidence of its standing in the community or in its field. In response to the RFE, the petitioner submitted documentation about Rahbani Productions retrieved from the company’s website, which was accessed by the petitioner on August 7, 2008. The petitioner again submitted no documentation from independent sources that would verify Rahbani Productions as a company with a distinguished reputation.

The petitioner also failed to provide documentation to establish that his role as a senior editor with Rahbani Productions was in a leading or critical role for the company. [REDACTED] who served as senior producer with Rahbani Productions, did not indicate in his letter the role played by the petitioner at Rahbani Productions. While a company booklet lists the petitioner as “Head of Post Production” reporting to the Executive Producer, [REDACTED], the president and CEO of the company, did not indicate in his statement that the petitioner served in a leading or critical role for the company, in a role that was subordinate to at least [REDACTED] himself and the Executive Producer.

The petitioner also claims to meet this criterion based on his position at [REDACTED]. The petitioner provided a copy of his contract with [REDACTED] reflecting that he was hired as senior editor for the company. The petitioner submitted a copy of a company booklet from [REDACTED] reflecting that the company has six employees plus the director, and that the petitioner reported directly to the director. However, simply listing the petitioner’s title and documenting his position within the hierarchy of the company’s structure is not sufficient to establish that his role was leading or critical within [REDACTED].

Further, as evidence that [REDACTED] is an organization with a distinguished reputation, counsel referenced the company’s list of clients shown in the booklet. Among those listed were the Dubai Government and Toyota. However, having influential clients is not evidence, in and of itself, that the company is an organization with a distinguished reputation. In response to the

RFE, the petitioner submitted additional documentation about [REDACTED] retrieved from the company's website on August 7, 2008. Nothing in the documentation, however, establishes the company's reputation and the petitioner submitted no independent documentation to confirm that [REDACTED] is a company with a distinguished reputation.

In his letter accompanying the petitioner's response to the RFE, counsel stated that the petitioner had recently "been awarded the position of Video Editor for MTV Networks." [Emphasis omitted.] According to the petitioner's curriculum vitae submitted with his response to the RFE, he began working with MTV Networks in December 2007, four months after he filed his visa petition. Accordingly, his position with MTV cannot be used to establish his qualification under this criterion. *See* 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Also in response to the RFE, counsel asserted that the petitioner meets this criterion based on his service as editor for *Comedy Zen*, *Finding my America* and *Uncle Morty's Dub Shack*. The only evidence of these positions presented by the petitioner was on his curriculum vitae. The petitioner submitted no documentation to confirm his employment with these productions, that his employment was in a leading or critical role, or that they were organizations with distinguished reputations.

The director determined that the petitioner meets this criterion. However, we do not concur and withdraw the director's determination. The petitioner has not established that any of the organizations that he has worked for enjoys a distinguished reputation. Additionally, the petitioner has not submitted sufficient documentation to establish that his position with Rahbani Productions or [REDACTED] was in a leading or critical role. As discussed previously, the AAO maintains de novo authority to review the director's decision. 5 U.S.C. 557(b); *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d at 1149.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted letters from Rahbani Productions establishing his rate of compensation from March 24, 2003, when he was initially hired, to an increase in pay in 2005. The letter set the petitioner's pay effective January 2005 at 10,000 Dirhams (Dhs.) per month, which included a basic salary of Dhs. 5,990, transportation of Dhs. 1,200, accommodations of Dhs. 2,000, cost of living of Dhs 700 and "others" of Dhs 110. The petitioner submitted no documentation to establish the exchange rate for the Dirham, although counsel alleged that the petitioner's severance salary of Dhs. 9,000 "was close to \$3,000 per month." However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also submitted a copy of his contract with Macmillan Adam; however, the contract does not specify any rate of compensation. Counsel indicated in his letter accompanying the petitioner's initial submission that the petitioner was providing pay stubs from Macmillan Adam for the period February through August 2005 that would reflect a gross salary of Dhs. 15,000 per month which, according to counsel, was the equivalent of \$5,000 per month. However, the record does not contain a copy of these pay stubs and does not otherwise establish the petitioner's compensation with Macmillan Adam. 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 submitted copies of two earnings statements from Nu Way Advertising. The first, which indicates a pay period from April 1, 2007 to April 30, 2007, shows a bi-weekly salary of \$7,275. The second statement indicates a pay period from May 1, 2007 to May 31, 2007 and a bi-weekly salary of \$6,050. Counsel asserted that the petitioner therefore earned between \$144,000 and \$174,000 annually. However, the May statement indicates that the petitioner's year-to-date earnings were \$27,618 and that the pay date was June 1, 2007. The petitioner's curriculum vitae indicates that he began working for Nu Way Advertising in September 2006. Thus, according to his earnings statement, the petitioner's average monthly salary was approximately \$5,524. The petitioner submitted no evidence of a contract that establishes his rate of compensation with Nu Way Advertising.

The petitioner provided a copy of a salary search for editors from Compensation.BLR.com reflecting that those in the 90th percentile earned \$88,182 nationwide and \$115,392 in New York. However, it is not clear that the petitioner's job of media editor is included within this survey. The description for the survey states that the editor "[p]erform[s] a variety of editorial duties, such as laying out, indexing, and revising content of written materials, in preparation for final publication." This is not the job that the petitioner states he performs as a media editor.

The petitioner also submitted copies of job offerings for video editors in New York with salaries ranging from \$12.50 per hour to \$40,000 annually, and in Dubai with salaries of \$2,500 per month and Dhs. from 4,800 to 5,000. However, these jobs are announced for specific areas and do not indicate the top salaries for all media editors regardless of geographical location.

In response to the RFE, the petitioner submitted documentation from the Foreign Labor Certification Data Center Online Wage Library, which shows that, between July 2008 and June 2009, film and video editors could expect to earn up to \$76,648 in the New York-White Plains-Wayne, NY-NJ Metropolitan area. The petitioner submitted no documentation of salaries earned in other geographical areas and thus offers no true comparison of the salaries of those in his field.

The petitioner also submitted a copy of his contract with MTV Networks that establishes his salary at \$95,000 annually. However, the contract indicates that the petitioner was to begin his employment with MTV on February 24, 2008, well after the filing of the petition. The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to establish that he has commanded a high

salary or other significantly high remuneration. Thus, the petitioner's potential salary with MTV Networks at the time of filing would not qualify him for this criterion.

On appeal, counsel acknowledges that the salary survey provided with the initial submission does not refer to the petitioner's field. The petitioner provides another salary survey on appeal, which indicates that the national average salary of video editors in the 66.7 percentile is \$89,200. The salary survey shows only the average salary of editors and does not reflect the salaries of those in the top 33 percentile. Thus, the evidence does not demonstrate that the petitioner's salary is significantly high compared to all others in his field. Further, counsel compares the salaries in the survey to the petitioner's salary with MTV Networks. However, as discussed, the petitioner's salary with MTV Networks cannot be used to establish the petitioner's eligibility under this criterion. *See* 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner submitted no documentation to establish the exchange rate for the salary he received from Rahbani Productions. Additionally, the petitioner submitted no documentation to clearly establish his salary with Nu Way Advertising. The evidence submitted does not demonstrate that the petitioner's claimed salary with Rahbani Productions, McMillan Adam or Nu Way Advertising is significantly high relative to others in his field.

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

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

Although he did not allege that he meets this criterion, the petitioner submitted documentation of films he edited with the MTV Networks that he claims were reviewed thousands of times online through MTV.com. However, the petitioner's work with the MTV Networks was subsequent to the filing date of the petition and therefore is not evidence of his eligibility for this visa petition. *Id.* Additionally, the petitioner submitted no evidence of commercial success in the form of sales as required by the regulation at 8 C.F.R. § 204.5(h)(3)(x).

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

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 his field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Here, that burden has not been met. Accordingly, the appeal will be dismissed. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.