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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 0 5 2009
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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).

M Deadrick
for Perry Rhew
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. 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 he has sustained national or international acclaim at the very top level.

This petition, filed on February 20, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a singer and composer. 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).

Counsel contends that the director failed to discuss all alleged deficiencies in the Request for Evidence (RFE) and, therefore, the petitioner was not afforded proper notice or opportunity to address the deficiencies. It is not clear what remedy counsel seeks here. As counsel has identified what he perceives as the director's errors on appeal and we have considered such arguments and evidence in this proceeding, it would serve no useful purpose to remand the case. As with any claim of a violation of due process, a violation of immigration regulation will not render a decision unlawful unless the violation prejudiced the interests of the alien protected by the regulation. United States v. Rangel-Gonzales, 617 F.2d 529, 530 (9th Cir. 1980).

Citing *Matter of E-M*, 20 I&N Dec. 77 (BIA 1989), counsel asserts that the petitioner's evidence "meets the 'sustained national or international acclaim' standard since preponderance of evidence means the evidence more likely than not meets the requirements of the law." Section 291 of the Act provides:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States , the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, migrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The laws goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

Counsel further asserts that the director failed to follow the guidance provided in the memorandum of Michael Aytes, Acting Associate Director of Domestic Operations for USCIS, *AFM Update: Chapter 22: Employment-based Petitions (AD03-01)* (September 12, 2006), and that pursuant to the memorandum, "an alien who has achieved extraordinary ability in the past must show that [he] maintained a comparable level of acclaim thereafter." Counsel asserts that the petitioner's evidence shows that he has "maintained a comparable level of acclaim since the 70's to present." First and foremost, an agency guidance document, such as the Aytes memo, does not have the force and effect to preempt or countermand the clear mandate of an agency regulation, such as 8 C.F.R. § 204.3(h)(2) and (3), that have been properly promulgated in accordance with the Administrative Procedures Act (APA). Further, the AAO notes that the memorandum has no precedential value and, therefore, no binding effect as a matter of law upon USCIS. *See* 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding on all USCIS officers). Courts have consistently supported this position. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that legacy Immigration and Naturalization Serviced (INS) memoranda merely articulate internal guidelines for the agency's personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); *see also Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to legacy INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing a legacy INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of law"). Regardless, as will be discussed, contrary to counsel's assertions, the petitioner has failed to establish his *sustained* national or international acclaim.

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 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

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

of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted a copy of his 2006 membership card in the National Federation of Professional Artists of Ecuador (FENARPE). We note that the translation of the membership card was provided by counsel. Additionally, information provided by the petitioner from the FENARPE website was translated by using a web-based translation service. However, this translation does not comply with the provisions of the regulation, which require that documents submitted in a foreign language must identify the translator, the translator must certify that the translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3). Nonetheless, nothing in the documentation indicates that FENARPE requires outstanding achievements of its members as judged by national or international experts.

The petitioner also submitted a copy of an August 4, 1998 receipt indicating that he had paid to receive an "inscription card" from the National Guild of Professional Workers of Audiovisual Field (SINTRAPOAV) and a copy of a May 5, 2003 certificate from the Society of Ecuadorian Artists and Composers (SAYCE). We note that translations for both of these documents were also provided by counsel. The documentation provided does not indicate that either of the organizations requires outstanding achievements of their members. The SAYCE certificate indicates:

> For his compliance with more than sufficient achievements the requirements to be an active member of SAYCE and because through his extended career as a composer he has filled of splendor the national pentagram, contributing with his musical creations to the innovation and aesthetics of our cultural values.

In response to the director's request for evidence (RFE) dated April 2, 2008, the petitioner submitted a copy of the bylaws of SAYCE as it pertains to membership in the organization. The translation accompanying the document was provided by counsel. Article 8 of the bylaws provides that any author or composer "who freely and voluntarily express their desire to belong to this Society are members of SAYCE." Article 10 indicates that active members must submit "supportive documents" and evidence of their work, including evidence of publication or production of at least five of their works, and authorize SAYCE to act on their behalf. The documentation does not indicate that SAYCE requires outstanding achievement of its members as judged by national or international experts.

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

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In 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 him published in several publications such as the *Galeria*, *La Hora*, *El Tiempo*, and *El Comercio*. The petitioner submitted no documentation with the petition to establish that any of these publications are professional or major trade publications or other major media. Additionally, as noted by the director, these articles were published in the 1970's, 1980's, and 1990's, and none later than 2002, five years prior to the date the petition was filed.

In response to the RFE, the petitioner submitted a copy of a March 17, 2006 announcement that appeared in the newspaper *Ultimas Noticias* of his scheduled appearance at a local institution. The announcement appeared along with that of several others and is not an article primarily about the petitioner. The petitioner also submitted information about *Ultimas Noticias*, retrieved from the website of the user-edited 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. Further, the announced appearance of the petitioner, with no other information, is not about the petitioner or his work.

The petitioner also submitted a copy of an August 28, 2004 article from the *Hoy* newspaper, announcing the appearance of "more than 40 local artists" who were scheduled to appear at the "Agora of the House of Culture." The petitioner provided documentation regarding the *Hoy* retrieved from the newspaper's website. The document indicates that the *Hoy* circulates

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[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 original.]

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on September 15, 2009, a copy of which is incorporated into the record of proceeding.

nationally and is the "third newspaper with [the] greatest circulation in the country." Nonetheless, the petitioner is named as one of the 40 artists scheduled to appear. The article does not discuss the petitioner in particular and is not primarily about him or his work.

Also in response to the RFE, the petitioner submitted an article from BBC News, retrieved from the organization's website on May 7, 2004. The article addresses the unrest in Ecuador and quotes from "leading newspapers" in Ecuador, including *La Hora*, *Hoy*, *Expreso* and *El Comercio*. An October 2, 2007 report from the European Union Election Observation Mission on the election system in Ecuador identifies "four principal daily newspapers' in Ecuador, including *El Comercio*, *El Universo*, *Hoy* and *Expreso*. However, neither of these documents indicates that any of the newspapers have a significant national distribution and thus would qualify as major media. A newspaper may be a "principal daily" or "leading newspaper" and have only regional readership and therefore not be considered major media indicative of this highly restrictive classification.

The petitioner also claims to meet this criterion based on his appearance on television shows. The petitioner submitted screen captions and "transcripts" from what he stated were of his appearances on various television shows. The petitioner did not provide copies of the videos from which these captions and transcripts were taken. Further, television appearances do not meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3), which refers to published material that contain a title, date, and author of the material.

While the director may have overreached in stating "there is little evidence that the petitioner has performed at the national or international levels subsequent to the late 1980's," the evidence submitted in support of this criterion does not establish that the petitioner has achieved sustained national or international acclaim. As discussed previously, the articles submitted by the petitioner are dated at the latest, five years prior to the date the petition was filed on February 20, 2007. Although counsel alleges that the petitioner submitted copies of articles that were published in 2004 and 2006, as discussed above, these articles were not about the petitioner or his work.

Section 203(b)(1)(A)(i) of the Act requires the alien to demonstrate sustained national or international acclaim. Given that the majority of the petitioner's evidence relates to his work in prior decades and the lack of any published material about the petitioner during the five-year period preceding the filing of the visa petition, we concur with the ultimate conclusion of the director that the petitioner has failed to demonstrate his sustained national or international acclaim.

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 submitted a copy of a September 25, 2006 certification from FENARPE of Pichincha certifying that he had "collaborated as a member of the Qualifying Jury in the auditions taken to candidates who wish to be professional artists." The certification did not specify the period or the number of times the petitioner had served as a member of the "Qualifying Jury." In response to the RFE, the petitioner submitted another certification from FENARPE of Pichincha, dated April 16, 2008, indicating that the petitioner had "represented this Institution as QUALIFYING JURY in various events and categories, during the period comprised between October 2005 and September 2006." The letter again did not specify, and the petitioner did not provide evidence of any particular events or categories that demonstrate his participation as a judge with FENARPE.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition involving professional artists is of far greater probative value than judging a local competition involving students or amateurs. The petitioner's alleged judging of those "wish[ing] to be professional artists" on unspecified occasions is not indicative of the evidence required for this highly restrictive classification.

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.

According to counsel, the petitioner "has made an extraordinary contribution to the music of Ecuador" and "is considered the pioneer and promoter of the musical genre denominated 'balada andina' (Andean ballad)." Counsel stated that the petitioner's first song in this genre, recorded in 1975, "provided a big boon of record sales in the Ecuadorian music field, and created a big demand from the public used to buy romantic melodies."

As evidence that the petitioner meets this criterion, the petitioner submitted copies of the following:

1. A November 28, 1997 proclamation from the President of Ecuador saluting the petitioner during the "National Day of the Ecuadorian Artist" for his contribution to the "enlargement of [the] National Culture."

2. A May 26, 1997 "honor diploma" from the Ecuadorian Embassy in Colombia "in acknowledgement and gratitude for his valuable and voluntary work for the benefit and promotion of interests and values of Ecuador."

3. A November 11, 1999 certificate of recognition from the FENARPE for the beneficiary's "artistic career talent and professional quality, which have positioned in a prominent place the name of our country."

4. A June 18, 2001 "Mention of Honor" from the Argentinean Folkloric Institute for his "extensive career" and his "dedication to Folkloric Art and in gratitude for his friendship."

5. A May 5, 2003 certificate from SAYCE for exceeding the "achievements" and "requirements to be an active member of SAYCE and because through his extended career as a composer" he contributed to the "innovation and aesthetics of our cultural values."

6. A July 31, 1977 diploma from the Department of Federal District DF for his "artistic collaboration in the Popular Festivals."

7. An entry about the petitioner from volume one of the *Ecuadorian Music Encyclopedia*, published by the Ecuadorian Musicology Corporation.

Although the documents indicate that the petitioner was recognized for his work and through his music served as a musical ambassador for Ecuador, talent and notoriety in one's field, however, are not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

The petitioner submitted an undated letter from of SAYCE, highlighting the petitioner's career and indicating that he is a "consolidated artist" in Ecuador. However, the letter does not specify any contribution of major significance by the petitioner to his field of endeavor.

The petitioner also submitted an October 30, 2006 letter from of the Pichincha chapter of FENARPE, who stated:

> [The petitioner] is one of the most popular artists in Ecuador and is considered the pioneer and propeller of the genre denominated Andean ballade. This style consists in a fusion of classic melancholic melodies of the Andes of minor chords with a rhythm semi-danceable using electronic instruments that emulate traditional folkloric instruments . . . Generally, their lyrics refer to romance and frustrated love. The first composition of [the petitioner's] that marked the commencement for the Andean ballade as a genre in Ecuador was . . . recorded in

> 1975 . . .The novelty and refreshness brought by this song in the Ecuadorian landscape translated in a huge impact [of] record sales, and generated great interest for traditional Andean rhythms and their Ecuadorian roots in a public used to consume romantic melodic music.

stated that the petitioner's success with the Andean ballade influenced others to follow in his steps, and that:

> [The petitioner's work] caused a revitalization of Andean music in the country, and brought to [the] rest of Latin America music with strong Ecuadorian identity using as a vehicle the international pop [sic]. This, without doubt constitutes a great contribution . . . to the music of Ecuador.

While the record reveals that the petitioner was a popular artist, it does not support statements that the petitioner "revitalized" Andean music or that he was responsible for bringing Ecuadorian music to the rest of Latin America. Additionally, while stated that the petitioner contributed to Ecuadorian music, the record is not clear that he made a contribution of major significance to his field of endeavor. Assuming, however, that the petitioner's 1975 record contributed significantly to his field, he submitted no documentation to establish that he has made any significant contribution within the past 20 years.

Counsel asserts that the director erred in requiring that the petitioner show that he has "sustained his contributions" and that the petitioner must only show the significance of his contributions to the field. We note that section 203(b)(1)(A)(i) of the Act requires the alien to demonstrate sustained acclaim. As previously discussed, the criteria outlined in 8 C.F.R. § 204.5(h)(3) are designed to assist the petitioner in establishing the sustained acclaim required by the Act and in determining whether a specific criterion is met, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim.

Counsel asserts that the petitioner's sustained acclaim is evident in that there is a television show "devoted to review his career and greatest hits" that is "regularly broadcasted" on national television. Counsel further asserts that one of the petitioner's ballads was a hit in 2005-2006, and that he performed "live in a massive concert" at one of the major attractions in Ecuador. However, none of these documents indicate that the petitioner has made a contribution of major significance to his field or that any alleged influence he had over Ecuadorian music has continued. The April 21, 2008 certificate from Telesucesos, a television station in Ecuador, indicated that the petitioner had "performed several productions written by him" and that the "productions are regularly broadcasted in our channel." The letter does not indicate that the show was "devoted to review [the petitioner's] career and greatest hits." Additionally, a hit song in 2005 and a successful performance are also not, without more, indicative of a contribution of major significance to the petitioner's field of endeavor. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner claims to meet this criterion based on his performance in various concerts and television programs. The director concluded that the evidence indicated that the evidence "is adequate to demonstrate eligibility under this criterion" but that "there is little evidence showing that the petitioner has performed at the national or international levels subsequent to the late 1980s." We do not concur with the director's conclusion that the evidence shows that the petitioner meets this criterion and we withdraw this statement.

The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to singers and actors like the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. We find the petitioner's performances are far more relevant to the "leading or critical role" criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii) and the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), and are discussed separately within the context of those criteria.

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 petitioner's initial submission, counsel asserted that evidence of that the petitioner meets this criterion consisted of newspaper articles showing his participation "in different renowned Festivals representing Ecuador" and in "[c]ertificates asserting the participation [of the petitioner] in important and distinguished organizations."

The petitioner submitted several articles indicating that he was going to perform and had performed at different festivals. For example, a December 28, 1977 photograph of the petitioner in the newspaper *El Comercio Quito* was accompanied by a caption that he was traveling "to Cali to participate in the Pan-American Festival of Song and Interpreter organized by the Commission of Tourism of the Cauca Valley." A February 1978 article indicated that the petitioner was preparing to represent Ecuador at the Ancon Festival-Peru. The petitioner also provided copies of certificates reflecting his participation in events such as the 1990 National Congress of FENARPE and the 1995 First National Encounter of Ecuadorian Artists, Authors and Composers. The petitioner submitted no documentation to establish that his participation in any of these events was in a leading or critical role for the festivals of events or that the organizations he performed for had distinguished reputations.

In response to the RFE, counsel denied that the petitioner claimed to meet this criterion and does not address it further on appeal. Accordingly, 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.

The director determined that the petitioner meets this criterion based on his receipt of a gold record in 1977. We do not concur with the director's determination and withdraw his finding.

The petitioner alleged that his receipt of a gold record was the result of selling more than 100,000 records. The petitioner submitted a photograph of a gold record awarded to him by the "National Convention FADISA Of Publicity and Sales" on January 29, 1977 "For his International Projection in 1976." The petitioner submitted no other information about "FADISA" or documentation that the basis of its award of a gold record is sales of records in excess of 100,000. The petitioner also failed to submit evidence regarding record sales related to his claimed "hit" song from 2005 to 2006. 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 photographs of the covers of other compact discs and records that he has recorded. Counsel also refers to the newspaper articles submitted by the petitioner as evidence of this criterion. We note first that we have previously considered the newspaper articles under the criterion listed at 8 C.F.R. § 204.5(h)(3)(iii). Further, pursuant to 8 C.F.R. § 204.5(h)(3)(x), eligibility for this criterion must be established by "box office receipts or record, cassette, compact disk, or video sales."

Even if we accept the petitioner's gold record as evidence of this criterion, the petitioner's receipt of a gold record in 1977, 20 years prior to the filing of the visa petition, does not demonstrate the sustained acclaim required by section 203(b)(1)(A)(i) of the Act and this highly restrictive visa classification.

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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see*

also Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS,* 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The 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.