



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B2

FILE: [REDACTED]
LIN 07 103 52536

Office: NEBRASKA SERVICE CENTER

Date: OCT 08 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).

M. Deadrick
Perry Rhew
Chief, Administrative Appeals Office

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

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

On appeal, counsel argues that the petitioner meets 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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on February 21, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a musician (opera singer). The petitioner earned a Bachelor of Music degree from Seoul National University in February 1999; a Master of Music degree from the College-Conservatory of Music (CCM), University of Cincinnati in May 2001; and an Artist Diploma in Performance from the Julliard School in May 2003.

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). The petitioner submitted a certificate from the “Verbier Festival & Academy 2004” stating: “[redacted] and [redacted] have the pleasure to award the Thierry Mermod Prize of an amount of 2,500 Swiss Francs to [the petitioner] participant at the Voice Masterclass led by [redacted] and [redacted] from July 16 – August 1, 2004.” In response to the director’s request for evidence, the petitioner asserts that the Thierry Mermod Prize is a “major internationally recognized award.” The petitioner’s response provided the internet link for the Verbier Festival Academy at http://www.verbierfestival.com/index.php?page=academy_en, but no actual documentation from the internet site. This website states:

Verbier Festival Academy

A promising future

A real “must” for every festival-goer: observe the progress being made by future top soloists by attending free of charge the Verbier Festival Academy masterclasses. Against the magical backdrop of the Swiss Alps, renowned teachers dispense their wisdom to these promising young musicians who benefit from this exchange of creative ideas during an intensive three-week training period. Participants will give concerts every day and present the fruit of their labours at the end of the Festival during three exceptional final concerts. To further assist these young musicians, grants and prizes are awarded each year to the most deserving musicians.

See http://www.verbierfestival.com/index.php?page=academy_en, accessed on September 9, 2009, copy incorporated into the record of proceeding. We note that the petitioner participated in the Verbier Festival Academy as a masterclass student and “promising young musician” rather than as one of the “renowned teachers.” On appeal, the petitioner submits information and reviews pertaining to the Verbier Festival and its participants rather than documentation demonstrating the major international recognition of the Thierry Mermod Prize. In winning this prize, there is no indication that the petitioner faced competition from throughout her field, rather than limited to participating masterclass students in her approximate age group at the early stages of their careers. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-

time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this instance, the petitioner has not established that her Thierry Mermod Prize constitutes a major, internationally recognized award. This prize will be further addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

Barring the alien's receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria 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 submitted a [REDACTED], "First in Her Class, and Musical Artist of the Year Award for the Year 1998" from Seoul National University. The petitioner also submitted a "Musical Artist of the Year Award for the Year 1998" and a "Valedictorian Scholarship Award to the Julliard School of Music for the Year 2002" from [REDACTED], Artist Scholarship Foundation for the Republic of Korea." Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations accompanying the preceding award certificates were not certified as required by the regulation. Further, the award from Seoul National University reflects institutional recognition from her alma

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

mater rather than a nationally or internationally recognized prize or award for excellence in the field. With regard to the awards from the Artist Scholarship Foundation for the Republic of Korea, such scholarships represent the petitioner's receipt of financial assistance for her musical studies rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. We cannot ignore that competition for the above honors was limited to students and therefore winning prizes in such competitions is not an indication that the recipient "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). Such student honors do not distinguish the petitioner from others in her field who have long since completed their musical studies.

The petitioner submitted a certificate reflecting that she was "1st Runner Up" in the Westminster Choir College of Rider University Graduate Voice Competition. While it is certainly an honor to be selected as 1st Runner Up, the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the competition's organizers showing that the petitioner's recognition as 1st runner up was a prize or an award at this event. Further, we cannot ignore that the competition was limited to graduate students.

The petitioner submitted an October 16, 2002 letter from [REDACTED], Julliard School, stating: "The sixth annual Alice Tully Vocal Arts Debut Recital will take place on November 20, 2003. Your name has been presented to me as a nomination for this award. . . . All nominees who are interested in being considered for the award are asked to submit materials A group of finalists will be chosen from the nominees." While [REDACTED] letter indicates that the petitioner's name was submitted as a nominee, there is no evidence showing that she was ultimately selected as the winner of Julliard's sixth annual Alice Tully Vocal Arts Debut Recital award. Further, this nomination from the petitioner's music school reflects institutional recognition rather than national or international recognition.

The petitioner submitted a Certificate of Award from the Korean International Music Foundation (KIMF) "Music Competition 2005" reflecting that she placed first in the "Voice Division." The petitioner also submitted a flyer promoting this competition at the Zipper Concert Hall in Los Angeles and a page from the concert program containing profiles of the petitioner and two other young Korean artists. The record, however, does not include evidence showing that the petitioner's award from the KIMF competition was nationally or internationally recognized in her field. Moreover, there is no evidence demonstrating that the KIMF competition was open to experienced professionals in the field rather than limited to young artists of Korean ethnicity at the early stages of their careers.

The petitioner submitted an unsigned certificate from the President of the Les Azuriales Opera Festival stating that the petitioner was the winner of the Mark and Sarah Holford Award for the Best Performance of the Evening at the International Summer Academy of Nice Concert of Soloists in 2004. In response to the director's request for evidence, the petitioner submitted information from the Lez Azuriales Opera Festival's internet site stating:

Our Young Singers' Competition was started in 2003 to fulfil [sic] one of the Festival's core objectives: namely, to assist and promote young singers at the start of their careers. . . .

* * *

Young singers should send in an application form as soon as possible after 1st October to apply to take part in the Programme in the following August. Auditions usually take place between December and March.

8-10 singers are chosen from the applicants and invited to the South of France to participate in the Programme.

Along with rehearsals for the competition concert, a distinguished artist gives two days of private masterclasses for the singers on the Programme. This culminates in a public masterclass.

The singers then perform in the Competition Concert, during which the contestants are evaluated by a jury of distinguished judges. At the end of the evening, the judges' decisions is [sic] announced and prizes are awarded.

The prize winners are eligible to apply for the [redacted] during the 12 months following the Festival.

The petitioner also submitted an August 11, 2004 article in *Nice-Matin* entitled "The Summer Academy ends in song" stating:

The students of the celebrated international singing class of [redacted] perform this evening at the Ephrussi-de-Rothschild villa.

* * *

Among the last classes to remain here, is the class . . . taught by the singer [redacted] at the Julliard School in New York

* * *

Sixty students came to take this class from Europe, the United States, Canada, Iceland, India, Japan and Korea.

The top students perform in a concert this evening at the opening of "Azuriales" at the villa Ephrussi-de-Rothschild

Among these young performers . . . many will be on the international stage tomorrow. Nice will have been the start of their career.

While the preceding information indicates that the petitioner received an award as the best student performer in the Summer Academy's educational program, there is no evidence demonstrating that her Mark and Sarah Holford Award equates to a nationally or internationally recognized prize or award for excellence in the field. There is no indication that the petitioner faced competition from throughout her field, rather than limited to students in her approximate age group at the early stages of their careers.

The August 11, 2004 article in *Nice-Matin* states that the petitioner "received first prize in a competition organized in our region in Biot last June, presided by the great singer Christa Ludwig." The record, however, does not include primary evidence of this prize originating from the competition's organizer. 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). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). On appeal, the petitioner submits a brochure for the 21st Festival of Music Hours of Biot (2004). This brochure was unaccompanied by a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, the petitioner's name does not appear among the numerous artists identified in the brochure. Further, there is no evidence showing the significance and magnitude of the Biot competition. Moreover, there is no indication that the petitioner faced competition from throughout her field, rather than limited to young artists at the early stages of their careers. Even if the petitioner were to submit primary evidence of her first prize in the Biot competition, the petitioner has not established that her prize is tantamount to a nationally or internationally recognized prize or award for excellence in the field.

As previously discussed, the petitioner submitted a certificate from the "Verbier Festival & Academy 2004" stating that she received the Thierry Mermod Prize as a participant in the "Voice Masterclass led by [REDACTED] and [REDACTED] from July 16 – August 1, 2004." There is no evidence showing that the petitioner faced competition from throughout her field, rather than limited to promising young artists in the Voice Masterclass who were in the early stages of their careers. The petitioner has not established that her Thierry Mermod Prize equates to a nationally or internationally recognized prize or award for excellence in the field.

With regard to awards won by the petitioner in student or young artist competitions, we do not find that such awards indicate 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). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard.

See Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a vocalist who has had success in student or age-restricted competition should qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no evidence establishing that the petitioner’s prizes and awards had significant national or international recognition beyond the context of the events where they were presented, and that the competitions she won were open to well established vocalists of all ages in her field of endeavor rather than limited to young musicians or students at the early stages of their careers.

In light of the above, the petitioner has not established that she 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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country’s population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

² While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

The petitioner initially submitted several playbills for various concerts and productions in which she performed. The plain language of this regulatory criterion requires “[p]ublished material about the alien in professional or major trade publications or other major media” including “the title, date, and author of the material.” The playbills submitted by the petitioner do not meet the preceding requirements.

The August 11, 2004 article in *Nice-Matin* “The Summer Academy ends in song” includes one sentence mentioning the petitioner and an accompanying photograph in which she appears with five other individuals. This article is about the International Summer Academy of Nice and its upcoming student concert rather than the petitioner. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.” Further, there is no evidence (such as circulation statistics) showing that this local newspaper qualifies as a form of major media.

The petitioner submitted a May 11, 2001 article in the Opera Review section of the *Cincinnati Post* entitled “CCM’s magical ‘Rusalka’ prevails in real-life drama.” This article includes six sentences discussing the petitioner’s performance, but focuses primarily on the “Rusalka” production in general rather than the petitioner. On appeal, the petitioner states: “The Cincinnati Post is a discontinued afternoon daily newspaper that was published in Cincinnati, Ohio. . . . The Post published its final edition on December 31, 2007.” Without further documentary evidence regarding this newspaper such as its prior circulation statistics, the petitioner has not established that this now defunct local newspaper qualifies as a form of major media.

The petitioner also submitted a May 13, 2001 article in the Opera Review section of the *Cincinnati Enquirer* entitled “CCM triumphs in first performance of ‘Rusalka.’” This article includes only two sentences discussing the petitioner’s performance and focuses primarily on the “Rusalka” production in general rather than the petitioner. On appeal, the petitioner submits information from the CareerBuilder internet site stating: “The Enquirer’s Sunday readership exceeds 808,500 people, while weekday readership is around 562,100.” Aside from the article in the *Cincinnati Enquirer* not being about the petitioner, there is no evidence showing the distribution of this publication relative to other U.S. newspapers to demonstrate that it qualifies as a form of “major” media.

In response to the director’s request for evidence, the petitioner submitted an article entitled “Rising star in music” published in what appears to be the Los Angeles edition of *Korea Daily*. The petitioner also submitted two articles published in the New York edition of *Korea Daily* in October 2002, one of which was entitled “Big success in young artists concert.” The title of the second article was not identified as required by the plain language of this regulatory criterion. Further, the English language translations accompanying the preceding articles were not full translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without submitting complete English language translations, the petitioner has not established that these articles were about her. Moreover, the incomplete English language translations did not identify the authors of the preceding articles or their dates of publication. On appeal, the petitioner submits an article from the *New York Times* internet site stating that *JoonAng Ilbo*, one of South Korea’s “three biggest-selling newspapers,” has “a circulation of two million.” The petitioner states: “*Korean Daily, JoonAng Ilbo* in Korean, is a one [sic] of major newspapers in Korea, covering 23% (2 million copies) of all newspaper circulations.” The record, however, does not establish that the *Korea Daily* articles submitted by the petitioner were published in South Korea’s issue of *JoonAng Ilbo*

and distributed to two million readers in that country. Rather, the submitted articles were published in the New York and Los Angeles editions of *Korea Daily* and it has not been established that these articles were distributed beyond the Korean-speaking segment of those two cities' populations. For instance, there is no evidence showing the circulation statistics for the *Korea Daily* editions in which the submitted articles were published. Accordingly, aside from the other deficiencies already mentioned, the petitioner has not submitted evidence showing the distribution of the newspaper editions in which she appeared relative to other national media to demonstrate that the editions mentioning her qualify as "major" media.

In light of the above, the petitioner has not established that she 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 recommendation praising her talent as a vocalist. We cite representative examples here. Talent in one's field, however, is 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 her field.

[REDACTED], Myung Opera House & Music Academy, states:

I am writing this letter in support of [the petitioner], an operatic soprano of phenomenal talent and accomplishment. At the relatively young age of thirty-two she is both a scholar and a world-class performer.

It is significant that she was first in her class at Seoul National University for graduate and undergraduate training. She was also first in her class at The Julliard School of Music in New York, where she was granted a full scholarship for her years of training. Finally she has proven herself professionally as a performing artist with many remarkable performances in Europe and Asia.

[REDACTED], Metropolitan Opera House, states: "[The petitioner] is a highly talented young artist of great potential. She has a beautiful, warm soprano voice which, in my personal opinion, will certainly open up and mature to be what one may call a genuine lyric soprano voice."

[REDACTED] states that the petitioner "is an outstanding vocalist and performer with a gift that brings beauty and great artistry to each role and each piece that she sings."

[REDACTED], Metropolitan Opera, states:

I first met [the petitioner] three years ago when I accompanied her in the International Vocal Arts Institute held that year in Italy.

* * *

With the considerable study she has undertaken since that time, her progress is understandable and well-deserved. . . . With her demonstrated desire to improve and to study, I firmly believe that [the petitioner] will have a prominent place in the future of opera and am happy to recommend her to you.

[REDACTED], states: “[The petitioner] is a beautiful singer, a thoughtful musician, a responsible artist and a wonderful colleague. I cannot recommend her highly enough, and I look forward to watching her grow into a major artist.”

[REDACTED], Julliard School, states: “[The petitioner] has a beautiful lyric soprano voice of unusual timber and range. She is also a wonderful musician and has charm, beauty, warmth, wit, imagination and versatility. I recommend her most highly to any organization, which could provide an opportunity for such a gifted young artist.”

[REDACTED], states: “[The petitioner] is a very talented young artist with wonderful potential.”

In her initial letter, [REDACTED] Julliard School, states: “I strongly believe that [the petitioner’s] natural talent, personality, and character will enable her to become one of our fine and exciting vocal artists of the future.”

[REDACTED] CCM, University of Cincinnati, states: “As [the petitioner’s] English has improved, so has her progress. [The petitioner] has an engaging, positive attitude and is extremely supportive and appreciative of other performers. One of her strongest talents is her feeling and attention to text and an honest delivery of the music.”

[REDACTED] Voice Department, College of Music, Seoul National University (SNU), states: “[The petitioner] is a highly talented young artist of great potential. . . . While a student at SNU, [the petitioner] has impressed the entire voice faculty with the remarkable vocal progress she has made over the past few years.”

[REDACTED], states: “I strongly believe that [the petitioner] will soon grow to become one of the great artists in the opera world, and I am happy to introduce her to any organization with strong support.”

[REDACTED], Mannes College, states:

I have had the privilege of watching [the petitioner] mature as an artist as an artist and develop into one of the finest young musical talents.

This year [the petitioner] participated in a unique Resident Artist Program. This program is a partnership with the Metropolitan Opera Guild and Mannes. She was one of several sopranos chosen for this prestigious opportunity. [The petitioner's] contribution was significant in the field of education. She was recognized and appreciated for her outstanding abilities.

The letter from _____ does not specify the petitioner's original contribution to the program or elaborate upon its impact in the fields of education or opera.

The preceding individuals discuss the petitioner's progress, growth, and future potential rather than addressing how her past musical achievements already qualify as contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). With regard to the petitioner's achievements as vocalist, the letters of recommendation do not specify exactly what her original contributions in opera have been, nor is there an explanation indicating how any such contributions were of major significance in her field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has excelled as a student and earned the admiration of those with whom she has studied and performed, there is no evidence demonstrating that she has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other vocalists nationally or internationally, nor does it show the field has somehow changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a vocalist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

We withdraw the director's finding that the petitioner meets this criterion. The petitioner submitted evidence of her performances in a university setting and in conjunction with various workshops such as the Verbier Festival & Academy and the Les Azuriales International Summer Academy. There is no evidence showing that these performances were consistent with sustained national or international acclaim at the very top of her field. Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for vocalists such as 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. The petitioner's stage performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x).

In light of the above, the petitioner has not established that she meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The letter of recommendation from Susie Ibarra states that the petitioner "performed in a lead role, Noe, in the premiere of music and libretto of *Shangri-La* . . . at Passage Theatre in New Jersey . . . as well as South Oxford Theatre in Brooklyn." Even if we were to conclude that an opera production equates to an organization or an establishment, which we do not, there is no evidence showing that this production or the preceding venues have a distinguished reputation.

The petitioner submitted evidence of her performances in a university setting and in conjunction with various international workshops. In a January 25, 2007 letter accompanying the petition, counsel states: "[The petitioner] has performed leading roles in numerous national and international artistic performances. She has performed in operas and recital appearances in many concerts." Performances, opera productions, recital appearances, and concerts do not constitute "organizations or establishments." In addressing counsel's statements, the director's decision stated: "The petitioner did not provide clear details of her roles with any organization as a whole; rather she made references to single performances. Regardless, the record neither documents those roles, nor the reputations of the organizations." We concur with the director's findings. With regard to the petitioner's role in various operas and concerts, there is no evidence showing that her productions had a distinguished national reputation or evidence differentiating her role from that of the other performers. For example, there is no evidence showing that her name frequently received top billing or that the productions' popularity increased when she was known to be performing. Accordingly, the petitioner has not established that she was responsible for the success or standing of the productions in which she participated to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of her field.

In response to the director's request for evidence, the petitioner submitted a July 9, 2008 letter from [REDACTED], Pre-College Division, Julliard School, stating: "[The petitioner] has been hired as a faculty member by the Pre-College Division of The Julliard School to teach voice to non-majors." [REDACTED] letter was accompanied by a One-Year Contract Addendum for the Julliard School dated August 23, 2007. On appeal, the petitioner submits a second letter from [REDACTED] of the Julliard School and [REDACTED] of Westminster Choir College discussing the petitioner's role as a voice teacher developing pre-college students at Julliard. The petitioner's appointment and employment as a Julliard faculty member post-dates the filing date of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's role as a Julliard faculty member in this proceeding.

The petitioner's appellate submission also includes a letter from the International Summer Academy of Nice [Academy] stating: "From 2004 to 2008, [the petitioner] has been employed at the . . . [Academy] . . . as assistant to the world renowned singing professor [REDACTED] . . . For five years, [the petitioner] has been teaching vocal technique to students from 50 countries throughout the world." There is no evidence showing that the petitioner's role as an "assistant" in this summer music workshop was leading or critical to the Academy as a whole. Further, aside from the Academy's own self-serving promotional material and the August 11, 2004 article in *Nice-Matin* (a local newspaper), there is no evidence showing that the Academy has a distinguished reputation.

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

In addressing the evidence submitted by the petitioner for this criterion, the director's decision stated:

[T]he alien petitioner indicated on the Form I-140 that her wages per week are \$4615.00 +/- and that her annual income is \$240,000.00 +/-, however the record does not document these claims. A bank statement was submitted demonstrating that the alien petitioner's father has two Certificates of Deposit worth a total of \$177,432.43. However the record contains no evidence that this money was earned by the alien petitioner for work in her field, nor does it show the amount of time it took to earn it. As other evidence a contract addendum was submitted demonstrating that the petitioner is paid at the rate of \$52 per hour for teaching. The record contains no evidence demonstrating that this is significantly high remuneration compared to others in the field.

We concur with the director's findings. The record does not include evidence (such as payroll records, a Form W-2, or income tax returns) showing the petitioner's actual earnings for any specific period of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at

158, 165. As previously discussed, the petitioner submitted a One-Year Contract Addendum for the Julliard School dated August 23, 2007. This document states that the petitioner was to be paid at the rate of \$52.00 per hour. This contract addendum post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's rate of pay at Julliard in this proceeding. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in his field. Without a proper basis for comparison and objective evidence showing her actual earnings during a sustained period predating the filing of the petition, we cannot conclude that the petitioner has commanded a high salary or other significantly high remuneration for services in relation to others in her field. Accordingly, the petitioner has not established that she 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.

This regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various opera productions, recitals, concerts, and workshop performances cannot meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no evidence showing that petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature her. Further, there is no evidence showing, for instance, that the petitioner's musical recordings have generated substantial national or international sales. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner has earned the respect and admiration of the individuals offering recommendation letters, a comparison of their achievements with those of the petitioner shows that she has not amassed a record of accomplishment which places her among that small percentage at the very top of her field. We agree with the experts' assertions that the petitioner possesses great talent as a vocalist, but the evidence of record does not establish that she has sustained national or international acclaim at this stage of her musical career.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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 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.

ORDER: The appeal is dismissed.