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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**

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 29 2009
EAC 03 022 51855

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:



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
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center on February 4, 2005. On June 22, 2005, the director reaffirmed that decision on motion. On December 30, 2008, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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

On appeal, the petitioner submitted a statement and additional evidence. The AAO upheld the director's findings that the petitioner had not established her eligibility for the exclusive classification sought, noting, among other issues, that the record did not contain *certified* translations as required under 8 C.F.R. § 103.2(b)(3). On motion, the petitioner submits a statement and additional evidence, including a September 5, 2008 "Certificate of Accuracy" signed by [REDACTED] affirming a familiarity with English and Chinese and that the "above translation from the annexed document in the Chinese language" is true and complete. The certificate, however, does not identify which translation (singular in the certification) is being certified "above" or anywhere else on the certificate.¹

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.

¹ The record contains similar attestations from [REDACTED] dated June 9, 2009, [REDACTED] dated March 21, 2005 and [REDACTED] dated July 16, 2002, but these documents also reference a single unidentified translation and cannot be considered a certification of all of the translations submitted initially and subsequently.

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, 60898-9 (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 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 October 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a lacquer artist. As discussed in the AAO's previous decision, the petitioner must establish her eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). More specifically, we cannot "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). In order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Thus, evidence of events that postdate the filing of the petition cannot be considered. That said, the petitioner must also demonstrate *sustained* national or international acclaim in 2002 when the petition was filed. As such, evidence that predates the filing of the petition by several years is also insufficient unless supported by evidence of more recent acclaim.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). 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. In our previous decision, the AAO considered the evidence submitted to meet the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) and concluded that the petitioner had not established that she meets any of these criteria. On motion, the petitioner addresses only the analysis under the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii) and (v). We reaffirm our previous holdings on the criteria not addressed on motion for the reasons stated in our previous decision, incorporated by reference into this decision, and will address the contested findings below.

The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

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

The petitioner initially submitted the following:

1. A May 10, 1986 certificate issued by the Arts and Crafts General Corporation of the Ministry of Light Industry and the Quality Control Association for Lacquer Ware of China stating: "This certificate is issued to testify that the art work, entitled 'Water Country' by [the petitioner and two other artists] has won [an] Award of Excellent Work at [the] 1986 Chinese Lacquer Painting Exhibition";
2. A December 29, 2000 Golden Award in lacquer painting issued jointly by the Association of China Artists, *China Art Magazine* and the International Scholar and Artists Society; and
3. A May 2002 "Certificate of Award" presented to the petitioner by the Chinese Ministry of Culture stating: "It is certified that you have been awarded the outstanding artist in Lacquer painting of China in 2002 for you have made great achievements in the art creating [*sic*] and international art exchange."

The AAO noted that the translations of the above award certificates were not certified as required under 8 C.F.R. § 103.2(b)(3).

The record contains a June 3, 2005 letter from [REDACTED] of Cultural Department, Chinese American Association of the United States of America, affirming that the 1986 Excellent Award was conferred at the First National Lacquer Paintings Exhibition and was the top prize above the first through third place awards and encouraging awards. [REDACTED] states that only five Excellent Prizes were issued. As noted by the AAO in our previous decision, [REDACTED] is not from either of the organizations that jointly issued the award.

On motion to reopen the director's decision, the petitioner submitted certificates issued in 2003 that postdate the filing of the petition. As stated in our previous decision and above, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, the AAO concluded that the 2003 honors could not be considered in this proceeding, and further noted that there is no evidence showing that those honors are nationally or internationally recognized prizes or awards for excellence in the field.

On appeal, the petitioner submitted newspaper articles from May 1986 discussing the First China Lacquer Painting Exhibition. As noted by the AAO, however, the translations of these articles were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3).

Also on appeal, the petitioner submitted a March 1, 2002 "Award Notice" from the World Peace Award Art Competition Committee, University of Houston, stating: "You are one of the award recipients for the First World Peace Award Competition! . . . We have received more than 1000 pieces works [*sic*] from all over the world, such as the United States, Canada, France, Italy, China,

Japan, etc." In addition, the petitioner submitted an award ceremony invitation, an "Outstanding Award" certificate, and program material reflecting that the exhibition and award ceremony occurred in May 2002. The petitioner's evidence also included a March 16, 2005 letter from [REDACTED] of the World Peace Award Art Competition Committee, Asian American Studies Center, University of Houston, stating that the petitioner competed in this competition in 2001 and won one of five outstanding prizes as selected from the 8,700 participants. As noted by the AAO in our previous decision, [REDACTED] letter contradicts the other evidence regarding the year (2001 versus 2002) and the number of entrants (8,700 versus 1,000). The AAO further noted that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Finally, the AAO acknowledged that the petitioner had also submitted evidence of exhibits but concluded that the petitioner had not established that these exhibitions are nationally or internationally recognized awards for excellence. Significantly, the regulations contain a separate criterion for the display of the alien's work at an artistic exhibition or showcase, 8 C.F.R. § 204.5(h)(3)(vii), and we will address this criterion below. We are not persuaded that evidence directly related to that criterion is presumptive evidence to meet this criterion.

On motion from the AAO's decision, the petitioner asserts that she has established the significance of the 1986 competition and discusses her exhibitions, including a newly documented exhibition in 1996. The petitioner resubmitted the two newspaper articles discussed above and submitted a letter from [REDACTED] of the Lacquer Art Professional Commission and a lead judge at the 1986 Chinese Lacquer Painting Exhibition. The translation of this letter is not individually certified and, as stated above, the Certificate of Accuracy references a single unidentified translation. In his letter, [REDACTED] asserts that the exhibition is "the national top-level and the most influential exhibition in China."

We reaffirm that exhibitions must be considered under their own criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vii), and cannot serve to meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Moreover, the petitioner has not submitted any new evidence regarding any award other than the 1986 award. Thus, at issue is solely whether the 1986 award can serve to meet this criterion.

As stated in the AAO's previous decision, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that qualifying awards be nationally or internationally *recognized*. It is the petitioner's burden to establish every element of this regulatory criterion.

We acknowledge the new letter from [REDACTED]. His letter carries more weight than the letter from [REDACTED] since [REDACTED] appears to have first hand knowledge of the 1986 exhibition. 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 (Comm'r. 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

A May 4, 1986 article in the *Guangming Daily* contains a small blurb about the lacquer art exhibition with 700 paintings from 15 provinces. The blurb states that the "1st" China Lacquer Painting Arts Exhibition takes place every April 28th "since the founding of the People's Republic of China." The May 12, 1986 blurb in *Xinhua Daily* states that 36 awardees came from "our" province alone. The blurb further states (grammar as it appears in translation): "At this exhibition, there were 124 works that has been selected into the exhibition." As noted above, the blurb in the *Guangming Daily* indicates that 700 works were on display. Assuming the different numbers do not reflect a discrepancy, it appears that 124 of the 700 works may have received awards. The record also does not resolve why the exhibit was the "1st" in 1986 if it has been going on since the founding of the People's Republic of China. Without additional evidence, such as evidence regarding the newspapers in which these blurbs appeared, including the section of the newspaper in which they appeared, and the number of awardees, we cannot conclude that the Award of Excellent Work was a nationally or internationally recognized award or prize in 1986 when it was issued. Regardless, a single award from 1986 is not indicative of or consistent with sustained national or international acclaim sixteen years later in 2002 when the petition was filed. The petitioner does not contest the AAO's previous finding that the record lacks evidence of the significance of the petitioner's 2000 and 2002 awards. For the reasons discussed above, the remaining evidence discussed by the petitioner under this criterion in the current motion relates to exhibits pursuant to 8 C.F.R. § 204.5(h)(3)(vii).

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

As noted by the AAO in our prior decision, in order to demonstrate that membership in an association meets this regulatory 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 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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted evidence of her membership in the Artists' Association of Suzhou and the South Bay Art Association of New York (SBAA). The AAO concluded that the record did not include supporting evidence (such as membership bylaws or official admission requirements)

showing that these associations require outstanding achievements of their members as judged by recognized national or international experts in the petitioner's field or an allied field.

The petitioner also submitted evidence showing that she was appointed as a council member of the World Culture Alliance (WCA) in July 2005 and as a member of the National Art League (NAL) in October 2003. The petitioner's membership in the WCA and the NAL commenced subsequent to the petition's filing date. Reiterating that the petitioner must establish eligibility at the time of filing, 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49, the AAO stated that these memberships could not be considered in this proceeding. Nevertheless, the AAO noted that there is no evidence showing that these recently joined associations require outstanding achievements of their members as judged by recognized national or international experts in the petitioner's field or an allied one.

On motion from the AAO's decision, the petitioner submitted a letter bearing no signature but the stamp of the Suzhou Fine Artists Association. The letter, dated January 15, 2009, states that the Suzhou Fine Artists Association is a group member of the China Fine Artists Association, which is the highest organization consisting of professional fine artists. According to this letter, members of the Suzhou Fine Artists Association "must possess the high rank professional qualification, at least winner of awards at city's level and state level as well as international level, be an excellent fine artist with a significant accomplishment." (Grammar as it appears in the original.) The letter further states that applications are reviewed by current members and approved by the Board of Directors. As with the other translations submitted on motion, the only indication of certification by the translator is the Certificate of Accuracy which is worded in the singular and is not attached to a particular translation.

Significantly, the AAO did not imply a letter of recommendation would resolve this issue. Rather, the AAO noted the lack of bylaws or official membership criteria as published by the association. The translation is ambiguous in that it does not make it clear whether an international award is required in addition to a city and state level award. Significantly, the most significant award documented in the record is the 1986 award which, at best, is national in scope. The record contains no evidence that the petitioner has won an award at the international level. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron*, 19 I&N Dec. at 795. Without the official bylaws or other published material by the Suzhou Fine Artists Association, accompanied by an individual certified translation, we cannot conclude that this membership is qualifying.

Also on motion from the AAO's decision, the petitioner submitted an unsigned letter purportedly from [REDACTED] of the SBAA, confirming that the petitioner participated in the association's Members' Art Exhibit in 2003, after the date of filing. As the letter is unsigned, it has no evidentiary value. That said, the record contains other evidence verifying the petitioner's participation in this event and her award at this event. The petitioner also submitted materials about the exhibition and award selection indicating: "Anyone with a genuine interest in [the association's] goals is welcome to join the association." Thus, it is clear that the SBAA does not require outstanding achievements of its members. The petitioner's award from this inherently local association is not a "membership" and, regardless, could not be considered because it postdates the filing of the petition.

Finally, the petitioner submits a letter from [REDACTED] of the NAL in New York (where the petitioner resides), asserting that the petitioner has been a member since April 4, 2003 and was required to submit three examples of original artwork to be juried for membership. First, as stated in the AAO's previous decision, this membership postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. at 49. Regardless, the name of the association is not determinative as to its national scope. Without evidence that the association is national in scope and utilizes national or international experts on its Membership Jurying Committee to determine whether the submitted art constitutes an outstanding achievement (rather than competency or potential), the petitioner cannot establish that NAL is a qualifying membership.

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.

The initially petitioner submitted two pages from a book entitled *Complete Works of Modern Chinese Arts* (1998). As noted by the AAO, this book includes the artistic creations of hundreds of artists. The petitioner's work appears on pages 50 and 178. The AAO concluded that the petitioner had not established that this book, or any significant portion of it, is about her. Further, the AAO noted that the English language translation accompanying this material was not individually certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Finally, the AAO noted that there is no evidence (such as number of copies sold) showing that this publication qualifies as a major trade publication or some other form of major media.

On motion from the director's decision, the petitioner submitted a February 28, 2005 letter from the Editor-in-Chief of Hong Kong Celebrity Publishing Limited stating that an album of the petitioner's paintings "is scheduled to publish in October 2005." On appeal, the petitioner submits a July 12, 2005 article about her in the *Queens Chronicle* and a July 17, 2005 article in *The Trentonian* about the opening of her art studio in the Quaker Bridge Mall. The petitioner also submits an advertisement for her studio in the "Special Advertising Section" of the July 14, 2005 issue of the *Trentonian*. The AAO noted that these materials submitted on motion were published subsequent to the petition's filing date and could not 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. The AAO further noted, however, that the unpublished album, the local newspaper articles, and the local advertisement do not appear to meet the plain language of this regulatory criterion.

On motion from the AAO's decision, the petitioner does not specifically address this criterion. Rather, the petitioner resubmits the previous evidence and the abovementioned letter from [REDACTED] who was one of the editors of the *Chinese Anthology of Contemporary Art – Lacquer Art*. [REDACTED] confirms that this album was published by the Hebei Fine Art Publishing House. While [REDACTED] attests to the petitioner's talent with lacquer, he does not provide information that might confirm whether the album is a professional or major trade journal or other major media, such as its sales numbers or distribution. Moreover, appearing as one of hundreds of artists in a directory of artists

cannot be considered published material "about" the petitioner as required under 8 C.F.R. § 204.5(h)(3)(iii).

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

On motion from the AAO's decision, the petitioner does not contest the AAO's conclusion that the evidence submitted to meet this criterion postdates the filing of the petition and that the record does not establish the significance of the petitioner's judging services. We affirm our previous holding and analysis, incorporated into this decision by reference.

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

The AAO acknowledged the petitioner's submission of several reference letters praising her talent as a lacquer artist but noted that talent in one's field is not necessarily indicative of artistic contributions of major significance. The AAO concluded that the record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted her field.

Specifically, after quoting from several letters, the AAO noted that, 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. The AAO further noted that reference letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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.

The AAO concluded that the petitioner had not demonstrated her impact on the field as a whole. In reaching this conclusion, the AAO noted that speculation as to the petitioner's future ability to contribute to lacquer art in the United States was insufficient evidence that she had already made a contribution of major significance.

On motion from the AAO's decision, the petitioner asserts that she is one of the most outstanding and recognized lacquer artists in the world and is the only Chinese lacquer artist currently residing in the United States. She asserts that she has made major contributions to lacquer art and the painting world but does not identify any specific contribution or provide examples of her impact in the field. The petitioner submits new reference letters. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field, however, are insufficient. *Kazarian v. USCIS*, ___ F.3d ___, 2009 WL 2836453, *5 (9th Cir. 2009).

The previously submitted letters, attesting to the petitioner's skill and promise for influencing art in the United States, were addressed in our previous decision, incorporated into this decision by reference, and need not be reevaluated here. The new letters, which mostly provide similar attestations of the petitioner's skill and likely future influence in the United States, will be addressed below.

[REDACTED] a professor at William Paterson University in New Jersey, asserts that the petitioner's contributions consist of her 1986 award and the selection of her work for the *Chinese Anthology of Contemporary Art*. The regulation at 8 C.F.R. § 204.5(h)(3) requires the submission of sufficient evidence under three separate criteria. An award (which is best considered under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i)) and inclusion in a large directory of hundreds of artists are not examples of contributions of major significance pursuant to 8 C.F.R. § 204.5(h)(3)(v). Similarly, [REDACTED] discusses the petitioner's award and album inclusion and concludes by stating that the petitioner "made a major contribution to the specialty and won the high recognition from peers of lacquer art profession in the world." This conclusory statement does not provide any examples of the petitioner's impact in the field.

[REDACTED] of the Taiwan Lacquer Artists Association, and [REDACTED] and Editor-in-Chief of US Digest (a Chinese-American magazine sold in New York stores), both affirm that the petitioner has the potential to bring the lacquer painting art form to the United States. While we do not question the importance of cultural diversity or the sincerity of the petitioner in introducing her art form to the United States, at issue for this classification is whether the petitioner enjoys sustained acclaim and at issue for this criterion is whether the petitioner has already made a contribution of major significance.

While the evidence demonstrates that the petitioner is a talented artist, it falls short of establishing that the petitioner had already made contributions of *major significance* such that her impact is discernable at the national level. Thus, the petitioner has not established that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted a 14-page publication that she identifies as her book entitled *My passion for the Art of Lacquer Painting* (2000). The English language translation accompanying this glossy paperback was not individually certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). There is no evidence showing the number of copies of this book in print, that the book had substantial national or international readership, or that the book was otherwise circulated in a manner consistent with sustained national or international acclaim. As such, the AAO concluded that the petitioner had not established that she meets this criterion.

On motion from the AAO's decision, the petitioner does not specifically challenge this finding although she resubmits her publication and notes that it has been assigned a Chinese unique book number. Without evidence of the distribution of this book, the petitioner cannot establish that it is a

professional or major trade journal or other major media as required pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Thus, we reaffirm our conclusion that the petitioner has not established that she meets this criterion.

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

The AAO concluded that the petitioner had not submitted evidence showing that her paintings have been displayed at significant artistic venues consistent with sustained national or international acclaim at the very top of her field. While the petitioner does not contest this conclusion on appeal, the petitioner submitted evidence indicative of the distinguished nature of the 1986 exhibition and the 1996 exhibition in Japan where she was a student. These exhibitions, however, predate the filing of the petition by six years or more. The petitioner's more recent exhibitions have been local to the New York area where she resides.

In light of the above, the petitioner has not established that she meets this criterion with evidence indicative of sustained national or international acclaim in 2002 when the petition was filed.

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

While not addressed in our previous decision, we note here that on July 8, 2001, the petitioner was appointed as executive director of World Association of Artist by the WCA. Even if the petitioner had submitted evidence of the association's reputation, which she did not, this appointment postdates the filing of the petition and cannot be considered.

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

The AAO acknowledged the submission of a 2005 appraisal of the petitioner's work that postdates the filing of the petition and the petitioner's income taxes reflecting business income from her mall store of only \$19,926 in 2003 and \$16,842 in 2004 that also postdate the filing of the petition. The AAO noted that there is no evidence showing that the painting actually sold for the appraised amount and, regardless, all of the evidence relating to this criterion postdates the filing of the petition and, thus, cannot be considered. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The AAO also noted that the plain language of this regulatory criterion requires the petitioner to submit evidence showing that she has commanded a high salary "in relation to others in the field" but that the petitioner had offered no basis for comparison showing that her compensation was significantly high in relation to others in her field.

On motion from the AAO's decision, the petitioner does not specifically contest the AAO's findings under this criterion but resubmits the appraisal. We reaffirm the AAO's previous finding that the petitioner has not established that she meets this criterion for the reasons stated in our previous decision, incorporated by reference.

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 have risen to the very top of the field of endeavor.

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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of December 30, 2008 is affirmed. The petition is denied.