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



U.S. Citizenship
and Immigration
Services

B2

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **AUG 04 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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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 sustained.

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 requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we find that the petitioner meets the statutory and regulatory requirements for classification as an alien of extraordinary ability.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

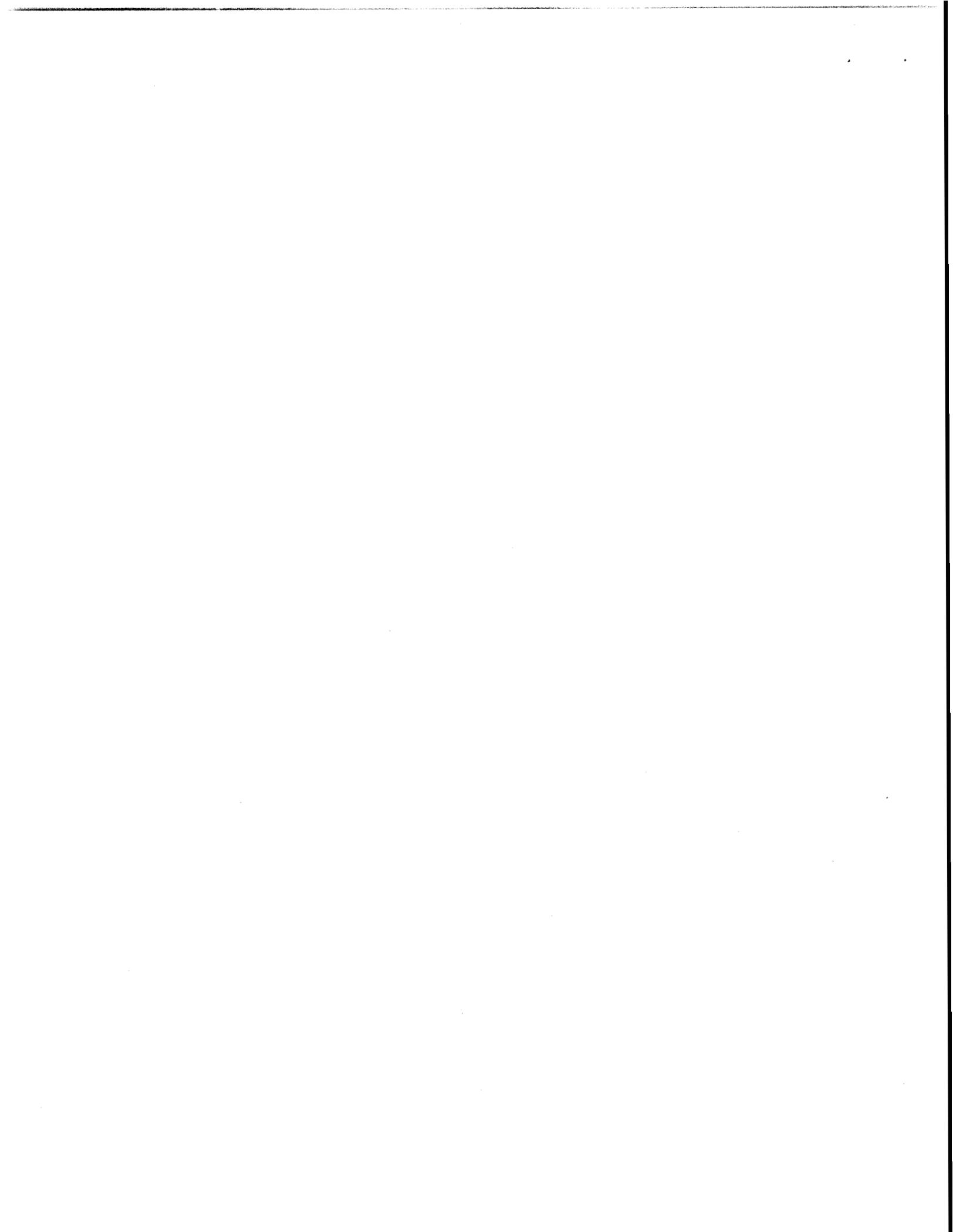
(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.



In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

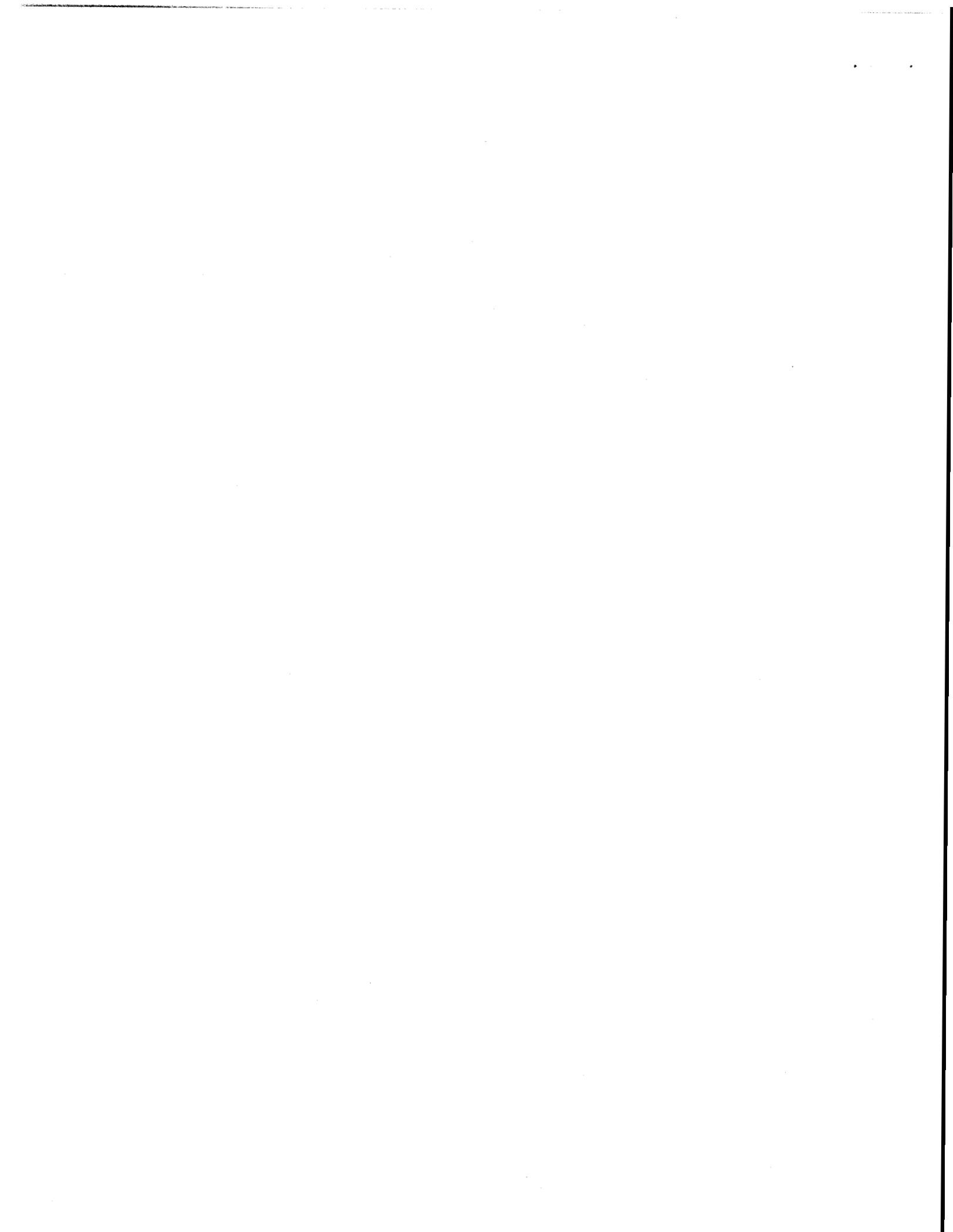
Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).



This petition, filed on July 14, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a Master Chef. We find that the petitioner's evidence meets the following categories of evidence under 8 C.F.R. § 204.5(h)(3).

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 evidence showing that, *inter alia*, he received gold medals at the 4th World Championship of [REDACTED] in 2002. For instance, the petitioner received a gold medal in the individual competition [REDACTED] for his abalone dish. The petitioner also submitted evidence demonstrating the significance of his awards and that they were nationally or internationally recognized in his field. Accordingly, the petitioner has established 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.

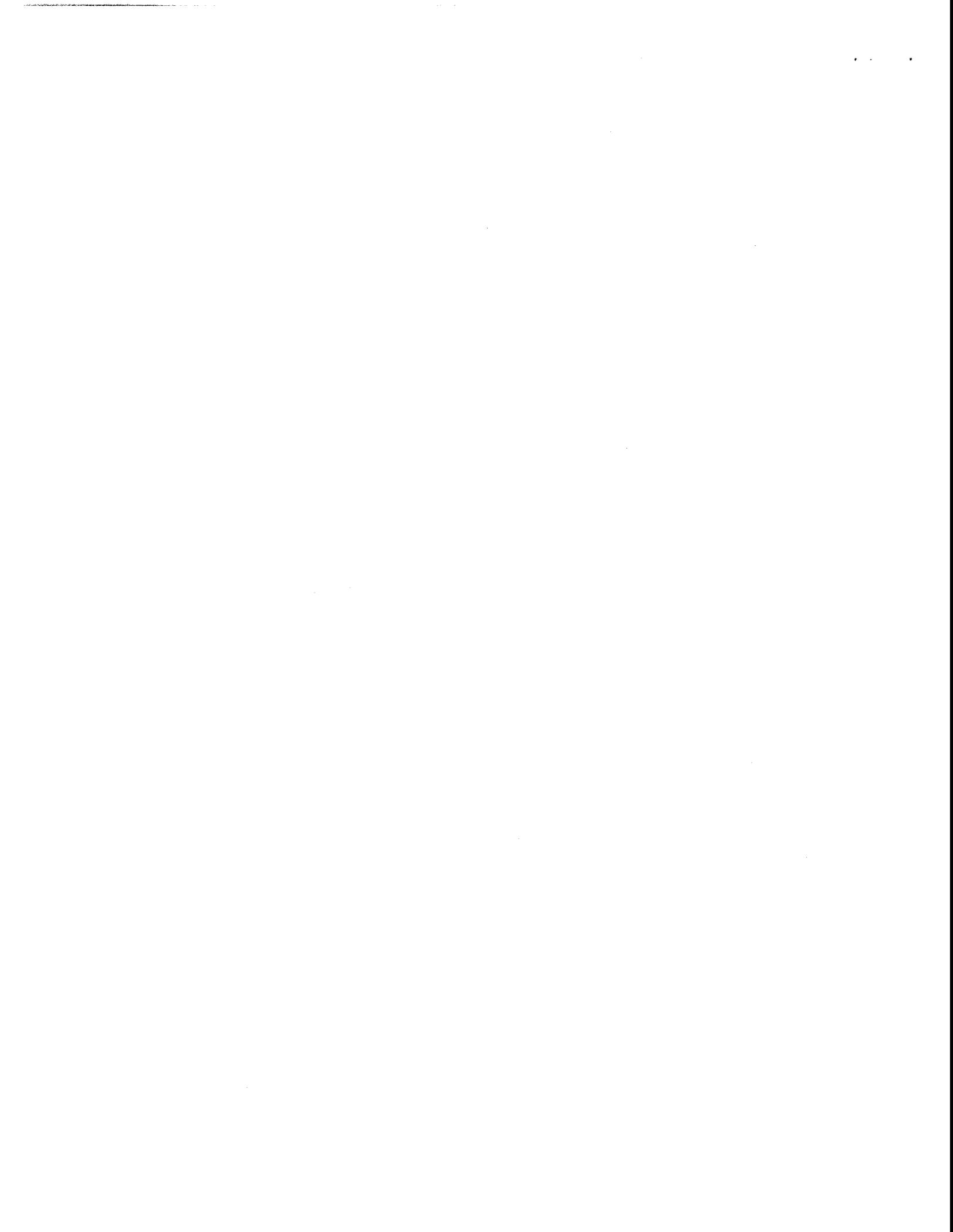
The petitioner submitted articles about him in [REDACTED] and [REDACTED]. In response to the director's request for evidence, the petitioner submitted independent circulation information indicating that these publications qualify as major media. Accordingly, the petitioner has established that he meets 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 evidence of his participation as a judge of other chefs at [REDACTED] [REDACTED] in Malaysia, the [REDACTED] jointly held by [REDACTED] the 15th Session of the [REDACTED] in China (2006), and [REDACTED] sponsored by the American Chinese Chefs' Association (2007). Accordingly, the petitioner has established that he meets this criterion.

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

The petitioner submitted copies of his 2007 U.S. Individual Income Tax Return and Form W-2 Wage and Tax Statements for 2007. The petitioner also submitted wage data from the Foreign Labor Certification Data Center Online Wage Library showing that his earnings are significantly high in relation to others in the field. Accordingly, the petitioner has established that he meets this criterion.



In this case, the petitioner meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1119-1120.

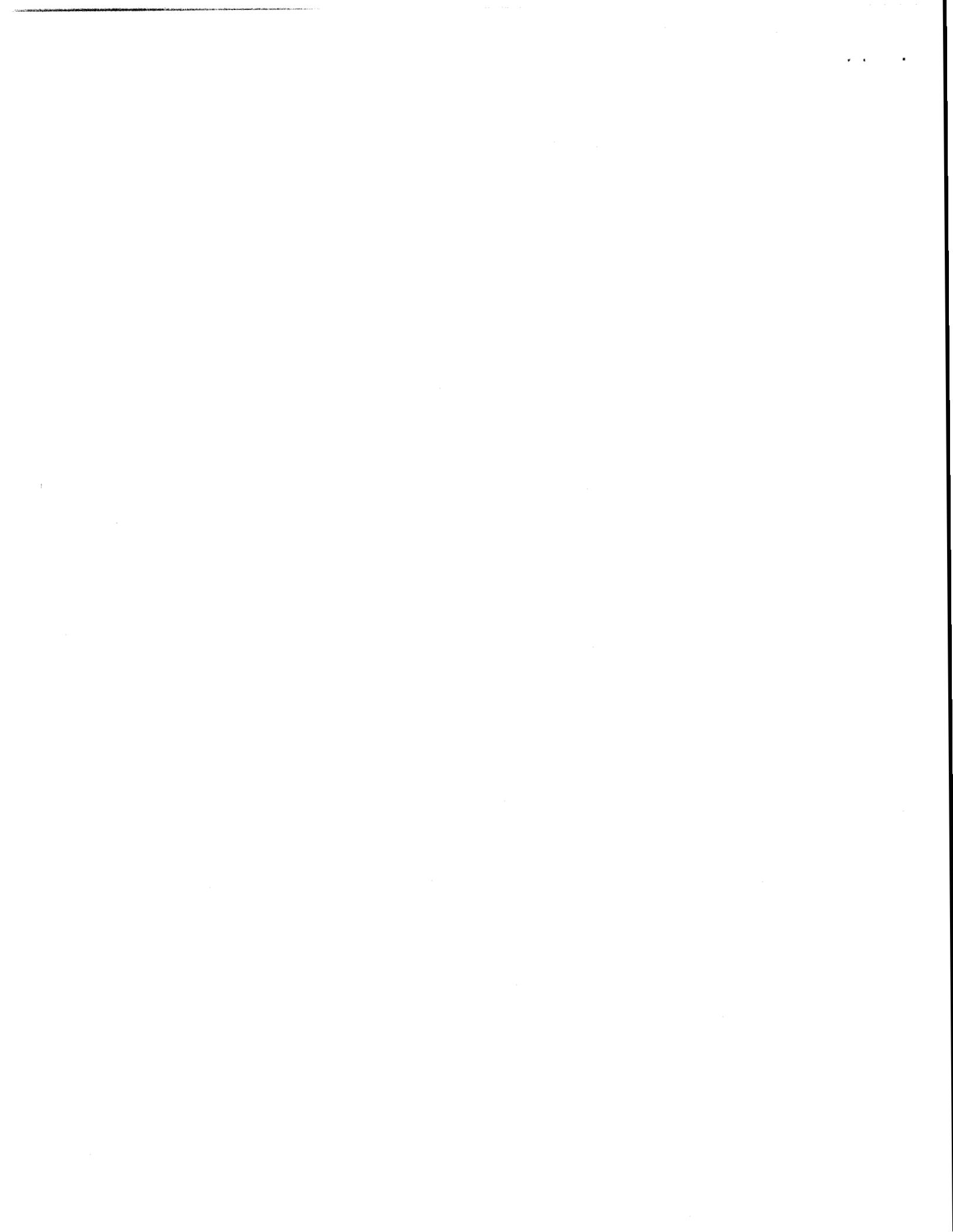
As indicated in our discussion of the evidence submitted under the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the petitioner has submitted extensive documentation of his culinary achievements. The submitted evidence is sufficient to demonstrate the petitioner’s sustained national or international acclaim as a Master Chef and that his achievements have been recognized in the culinary industry. In response to the director’s request for evidence, the petitioner submitted a letter from [REDACTED] summarizing several of the petitioner’s accomplishments:

I have known Master Chef [the petitioner] since the early 1980’s when I met him at an international cooking competition in Beijing, China, and subsequently we have participated together in many other culinary and charitable events in both China and North America.

[The petitioner] is internationally recognized for his extraordinary skills in cooking abalone; he is internationally known as the [REDACTED]. Because [REDACTED] is very difficult to prepare and cook properly, only an extraordinary and skilled chef could be bestowed this title.

[The petitioner] has been honored with many prestigious awards for his extraordinary ability in Chinese Culinary Arts, including the Gold Award for International Famous Chef awarded by the [REDACTED] in 1999. He was only the [REDACTED] to receive this award. In addition, he has won the Gold Medal in Individual Competition at the [REDACTED] for his [REDACTED] dish.

In 2004, [REDACTED] biggest brands worldwide, invited [the petitioner] to display his extraordinary skills in Chinese cuisine at a series of culinary shows in Malaysia. He was chosen for this event due to his international notoriety and achievements in the Chinese culinary arts. Entrance to the demonstration was by invitation only and solely to culinary professionals. In 2005, [the petitioner] was appointed Honorary Chairman of the [REDACTED] where he was awarded the [REDACTED].



In addition, during the same year, he was invited to be the judging Member of the International Review committee for the 2005 International Golden Chef Competition in Malaysia. Also in 2005, [the petitioner] was appointed as [REDACTED] where I am also a member.

Since December 2000, [the petitioner] has been a member of the prestigious LCommanderie des Cordons Bleus de France ("Cordons Bleus"), the world's premier culinary organization of which membership is awarded to only a select group of expert chefs chosen from around the world. Cordons Bleus is a well-recognized cuisine authority worldwide, which grants "Cordons Bleus" awards to honor outstanding restaurants and individuals worldwide that make a significant contribution to the field of cuisine art.

During his culinary career, [the petitioner] has been an Executive Chef at some of the most prominent hotels and restaurants in China, Hong Kong, and Australia including the Peninsula Palace Beijing, Beijing New Century Hotel, Nanhai Yucun Restaurant, and Regent Pearl F&B Amusement Co., Ltd.

I have encountered numerous gifted chefs worldwide, but it is rare to come across an extraordinary chef such as [the petitioner] who masters the skills and is an artisan in the Chinese culinary arts.

In this case, we find that the petitioner's achievements as a chef are commensurate with sustained national or international acclaim at the very top of his field.

III. Conclusion

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under at least three of the ten categories of evidence and established a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and "sustained national or international acclaim." His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.

