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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 13 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). On the Form I-140 petition, the petitioner lists her proposed employment as a business development specialist also specializing in international public relations. A subsequent job offer from counsel indicates that the petitioner is currently performing these duties for counsel’s law firm. The petitioner’s alien file record of proceeding, [REDACTED] includes an immigrant visa petition, [REDACTED] filed for the petitioner as a skilled worker under section 203(b)(3) of the Act by a billing service. On the Form ETA 750 supporting that petition, the petitioner indicated that she has been working for the billing company as a project business development manager since 2002. Prior to that, the petitioner worked as a project business manager for another U.S. company as of 2001. The instant petition is primarily based on the petitioner’s prior work in India. 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.

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 of 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, whose firm employs the petitioner, submitted a brief and additional evidence. Counsel also resubmitted the response to the director’s previous request for evidence that is already part of the record of proceeding and was considered by the director in the final decision. Counsel indicated that an additional brief or supplemental evidence would be submitted in 30 days. Counsel dated the appeal October 6, 2009. As of this date, approximately ten months later, this office has received nothing further. We will therefore adjudicate the appeal based on the original appellate submission and the record before the director. For the reasons discussed below, we uphold the director’s conclusion that the petitioner has not established her eligibility for the exclusive classification sought. As will be seen from our discussion below, counsel attempts to classify the same evidence under multiple categories of evidence to which the evidence does not relate and relies on evidence with no relation to the petitioner’s field of business. Finally, while the requirement for national *or* international acclaim does not require any recognition outside of India, the most persuasive evidence predates the filing of the petition by several years and is not evidence of “sustained” acclaim in India or the United States as required.

While U.S. Citizenship Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, classification. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

## 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.

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. 723 101<sup>st</sup> 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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 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.<sup>1</sup> 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 \*6 (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 \*3.

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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

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<sup>1</sup> 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).

F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria<sup>2</sup>

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

The petitioner asserts that the following evidence qualifies under 8 C.F.R. § 204.5(h)(3)(i):

1. First place in a journalism diploma course for 1986-87;
2. A 1999 "Rashtriya Ekta Award" from the Global Economic Council-Delhi and presented to the petitioner by the Governor of Sikkim for "Outstanding Individual Achievements & Distinguished Services to the Nation";
3. Inclusion in the 1999 edition of "Who's Who in the World"; and
4. A "Service Citation" and a certificate for "Distinguished Service" (the Dr. [REDACTED] recognizing "vocational service" from the Rotary Club of Bombay Mid-Town in 2000 and 2001.

In response to the director's request for evidence about the significance of the above recognition, counsel notes that the [REDACTED] states on the certificate that it recognizes outstanding individual achievements and distinguished services to the nation and, thus, its significance is "self-explanatory." Counsel relies on information posted on the website of Marquis, the publisher of the Who's Who series of directories, for the proposition that "only the elite are featured in this publication." (Emphasis in original.) The petitioner submitted material from [REDACTED] website; an email and an unsigned letter from [REDACTED] the Content Editor for Who's Who; the bylaws for the Rotary Club of Bombay Mid-Town; and a letter from [REDACTED] President of the Rotary Club of Bombay Mid-Town. On appeal, the petitioner submitted self-serving lists of accomplishments for other recipients of [REDACTED] and Internet search results for the award that primarily include the resumes of recipients, many of whom do not appear to be in the field of business. The petitioner did not submit any materials regarding the Global Economic Council-Delhi that issues the award or media coverage of the selection of awardees.

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The record contains no evidence that academic standing in a journalism diploma course is a nationally or internationally recognized prize or award in business, the petitioner's claimed area of expertise. Thus, that recognition does not constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

As the letter from Ms. [REDACTED] is unsigned, it has no evidentiary value, although we note that the letter attempts to distinguish Who's Who directories from "vanity publishers" by noting that some other vanity publishers require a fee for publication, which Who's Who does not. The email from Ms. [REDACTED] confirms that the petitioner also appeared in *Who's Who in the World* in 2002 and 2003 and *Who's Who in Finance and Business* for 2004-2005. Marquis' promotional website indicates that the first edition of Who's Who featured 8,602 individuals and that the current directories include the brief biographies of "millions" of individuals. By submitting materials from this website, the petitioner has made this website part of the record of proceeding. We have reviewed the site, which reveals that *Who's Who in the World* includes more than 60,000 profiles and *Who's Who in Finance and Business* includes the profiles of more than 24,000. See <http://www.marquiswhoswho.com/products/WOproinfo.asp> and <http://www.marquiswhoswho.com/products/WFproinfo.asp> (accessed April 29, 2010 and incorporated into the record of proceeding. Moreover, while not requiring payment for inclusion, Marquis promotes the sale of plaques to those included in its various directories. See <http://www.marquiswhoswho.com/catalog/default.asp> accessed April 29, 2010 and incorporated into the record of proceeding. Significantly, the webpage submitted by the petitioner includes a link to submit your own biography.

The above information does not suggest that inclusion in Marquis' directories is an "award" or "prize" for excellence in business as required under the plain language at 8 C.F.R. § 204.5(h)(3)(i). Rather, it would appear that inclusion in this published directory is best considered as to whether it might constitute published material pursuant to 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the large number of individuals featured in these directories and the ability to submit one's own biography is not consistent with a conclusion that inclusion in one of the publisher's directories is nationally or internationally recognized in the field of business. In light of the above, the petitioner's inclusion in various Who's Who directories is not qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

The bylaws for the Rotary Club of Bombay Mid-Town do not address the club's awards and, thus, are not relevant to 8 C.F.R. § 204.5(h)(3)(i). Mr. [REDACTED] asserts that the club has 150 members and that the petitioner was the only one recognized in 1999-2000 for exemplary service rendered to the club and for "Continuous Support In All Directions." Mr. Currawalla further states that the petitioner received the Dr. [REDACTED] for 2000-2001 for Distinguished Service. Mr. [REDACTED] concludes that the club's members selected the petitioner for these awards "based on meritorious performance." Mr. [REDACTED] does not explain how this award issued for vocational service by a local chapter of a club with members in several fields constitutes a nationally or internationally recognized prize or award in business.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further

information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* The [REDACTED] will be evaluated based on the record of proceeding before the director. We concur with the director that the nature of the [REDACTED] is not self-explanatory from the mere submission of the certificate. Without evidence that the award is nationally or internationally recognized in the field of business, we cannot conclude that the award is qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

*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 stated above, the petitioner documented her membership in the Rotary Club of Bombay Mid-Town. The petitioner also relies on the following documents as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii):

1. A 1999 certificate from the American Biographical Institute conferring an honorary appointment upon the petitioner to the Professional Women's Advisory Board;
2. A 1995 certificate of membership issued to the petitioner by the Bombay Management Association (BMA);
3. A letter from [REDACTED], Founder and Trustee of the Guild of Women Achievers (GOWA), confirming that the petitioner is a "charter member" of GOWA, founded in 1996;
4. A card confirming the petitioner's life membership in the National Centre for the Performing Arts in Bombay; and
5. A 1999 Certificate of Membership in the Quality Circle Forum of India (QCFI).

In response to the director's request for evidence of the membership requirements for the above associations, the petitioner submitted the bylaws for the Rotary Club of Bombay Midtown; a letter from Dr. [REDACTED] Director of the Western Regional Council of the Federation of Indian Chambers of Commerce and Industry (FICCI), discussing the petitioner's role with the BMA; Internet materials about the BMA; an email from Ms. [REDACTED]; Internet materials about GOWA; and Internet materials about the QCFI.

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires, according to the plain language of the regulation: (1) evidence of membership in an association, (2) evidence that the association is in the petitioner's field, (3) evidence that the association requires outstanding achievements and (4) evidence that membership eligibility is judged by recognized national or international experts in their field.

The record contains no evidence that the Rotary Club of Bombay Mid-Town is a business association. In fact, Mr. [REDACTED] indicates that the petitioner was admitted as a magazine editor rather than as a manager. The bylaws of the Rotary Club of Bombay Mid-Town provide the process for nominating and electing members but indicate that the classification and membership requirements are set forth in the club's constitution, which the petitioner did not submit.<sup>3</sup> Thus, the petitioner has not demonstrated that the club requires outstanding achievements of its members. As the bylaws do reveal that membership decisions are made within the club, however, which appears to be local to Bombay (Mumbai), the petitioner has not establish that membership in the club is judged by national or international experts in their field. For all of these reasons, the petitioner's membership in the Rotary Club of Bombay Mid-Town is not qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

The American Biographical Institute is commonly known to be another publisher of biographical directories.<sup>4</sup> Counsel has never explained how an honorary appointment from this for-profit publisher constitutes a "membership" in an association. In response to the director's request for evidence and again on appeal, counsel references the evidence regarding the [REDACTED] as relating to the American Biographical Institute. Counsel has not explained how the evidence of this award relates to the petitioner's honorary appointment from the American Biographical Institute. Even if we were to consider this honorary appointment to constitute a "membership," and we do not, the record also lacks evidence as to the requirements for this "membership." Thus, this evidence does not qualify under 8 C.F.R. § 204.5(h)(3)(ii).

While we acknowledge Dr. [REDACTED]'s letter regarding the petitioner's role with BMA, that letter is relevant to the category of evidence set forth at 8 C.F.R. § 204.5(h)(3)(viii) relating to leading or critical roles for an organization with a distinguished reputation. When considering whether evidence qualifies under 8 C.F.R. § 204.5(h)(3)(ii), at issue are the membership requirements for the association of which

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<sup>3</sup> The director expressly requested the associations' "constitution or bylaws" that provides the membership requirements. Thus, the petitioner was on notice that if it is the constitution that sets forth the membership requirements, than the constitution is the required evidence.

<sup>4</sup> See <http://www.abiworldwide.com/index.htm> accessed April 29, 2010 and incorporated into the record of proceedings.

the petitioner is a member. The Internet materials provided by the petitioner reflect that BMA life membership is open to “[a]ny individual holding a position of authority in any industrial or commercial firm, government enterprise, consulting firm, or individual teaching management subjects or engaged in management research.” It would appear that any manager holds a position of authority. Thus, it appears that membership is open to any manager, management teacher, or management researcher. We are not persuaded that these requirements reflect that BMA requires outstanding achievements in business for membership. Thus, this evidence does not qualify under 8 C.F.R. § 204.5(h)(3)(ii).

The National Centre for the Performing Arts in Bombay is not a business association and the petitioner has not demonstrated that this organization requires anything other than a donation for membership. Thus, this evidence does not qualify under 8 C.F.R. § 204.5(h)(3)(ii).

We acknowledge the email from Ms. [REDACTED] discussing the petitioner’s work with GOWA. We reiterate, however, that the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the membership requirements for the association irrespective of the role the petitioner performed for the association.<sup>5</sup> Ms. [REDACTED] indicates that the petitioner has mentored other members who had not yet achieved success, indicating that outstanding achievements are not required for membership. Similarly, the Internet materials about GOWA submitted by the petitioner indicate that GOWA’s focus is to develop a large network of members. In light of the above, this evidence does not qualify under 8 C.F.R. § 204.5(h)(3)(ii).

Finally, the materials from QCFI’s website submitted by the petitioner indicate that its mission is to provide educational and training opportunities and notes that the website contains information about how to become a member. These materials do not suggest that membership requires outstanding achievements. By submitting materials from this website and expressly inviting USCIS to review the site, counsel has incorporated the site into the record of proceeding. Our review of the membership page, [http://qcfihq.com/html/membership\\_individual.html](http://qcfihq.com/html/membership_individual.html) (accessed April 29, 2010 and incorporated into the record of proceeding), reveals that QCFI lists the benefits of membership, including training opportunities, without suggesting that there are any requirements to become a member. The membership application, available for download at [http://qcfihq.com/images/inner/QCFI\\_membership.pdf](http://qcfihq.com/images/inner/QCFI_membership.pdf) (accessed April 27, 2010 and incorporated into the record of proceeding), does not list any requirements for individual membership other than the payment of dues, which is not an outstanding achievement. Thus, the petitioner’s membership in QCFI is not qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

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<sup>5</sup> We do not rule out, however, consideration of higher levels of true membership, such as fellowship in an association where that level requires outstanding achievements.

*Published materials 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.*

At the outset, we note that counsel has asserted that evidence of the petitioner's listing as a contributor to publications qualifies under 8 C.F.R. § 204.5(h)(3)(iii). At issue under this regulation, however, is material by others written about the petitioner. Notably, the regulation requires evidence of the author of the material, suggesting that an unattributed listing of the petitioner as a contributor cannot qualify under 8 C.F.R. § 204.5(h)(3)(iii). As stated above, the petitioner has submitted evidence that various editions of Who's Who have included her biography. The petitioner also submitted the evidence discussed below.

First, the petitioner submitted a 1997 book *A Business of Her Own: Fifty Women in Enterprise in India* that includes a chapter about the petitioner. Madras Editorial Services produced the book for the FICCI Ladies' Organization. The record contains no evidence regarding the number of books printed and sold.

Second, the petitioner submitted a June 20, 2000 article in the *Business Times Bureau/Times of India*. This article, while mentioning the petitioner twice, is about advances by women in the business world in general as reported in a recent study by Pathfinders India.

Third, the petitioner submitted a photograph that, according to counsel, includes the petitioner and was published in *Mid-Day*. The copy of this photograph is so poor that the caption is illegible. Counsel asserts that the caption reports the petitioner's attendance at a fundraiser.

Fourth, the petitioner submitted an article entitled, "Curtains for the Master Boardroom," published on the "Edit Page" in *Mid-Day*. According to counsel, this article is dated June 23, 2000. Once again, while this article references the petitioner once, it is about the Pathfinders India study and a recent proposal that all public limited and joint stock companies should reserve one-fifth of their boards for women.

Fifth, the petitioner submitted an October 2000 excerpt in the "Beauty News" section of *New Woman* reporting that a BMA workshop included the petitioner as a speaker.

Sixth, the petitioner submitted two articles in *Savvy* dated July 1999 and July 2000. The 1999 article includes fashion opinions from 10 professional women, including the petitioner. The 2000 article is about the increase of women in management and quotes the petitioner as the chairperson of the Women in Management Committee of the BMA.

While [REDACTED] and [REDACTED] assert that the petitioner was also featured in a 1998 book, *Indian Business Through the Ages*, the petitioner did not submit a copy of this material. In response to the director's request for additional evidence, the petitioner submitted a list of circulation data

indicating that the *Times of India* has a circulation of 3,500,927, *New Woman* has a circulation of 71,947, *Savvy* has a circulation of 50,000 and *Mid-Day* has a circulation of 365,000. A handwritten note indicates that this data derives from the Audit Bureau of Circulation.

The director concluded that the petitioner submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii). The record does not support this conclusion. First, the only material “about” the petitioner are the book chapter and her profile in various volumes of Who’s Who.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material in a professional or major trade *journal* or other major media. As a book is not professional or major trade *journals*, the petitioner must demonstrate that they constitute major media. Without evidence that the book was widely distributed, such as sales data, we cannot determine whether the book constitutes major media.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) expressly requires evidence of the author of the published material. Thus, it does not appear that a profile with no byline in a directory included among tens of thousands of other individuals is the type of published material contemplated by the regulation.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii).

*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.*

Some of the evidence submitted under 8 C.F.R. § 204.5(h)(3)(iv) does not implicate judging the work of others in business. For example, counsel does not explain why the petitioner’s online self-help course, which appears to utilize self-evaluation rather than grading by the instructor, involves “judging.” Similarly, it is not clear how a career counselor “judges” the work of her clients. That said, Ms. [REDACTED] and Dr. [REDACTED] confirm that the petitioner participated in the editing of *Woman Executive Digest*, a magazine that, according to the petitioner’s chapter in *A Business of Her Own*, folded in 1992. Thus, the petitioner has submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv).

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

Initially, counsel asserted that the petitioner’s contribution of major significance is being “one of the first women to have succeeded in India’s male-dominated business world.” Counsel concludes that, based on this success, the petitioner is a role model. We acknowledge the submission of several career counseling advice columns authored by the petitioner. In response to the director’s request for evidence as to her influence in the field, counsel refers to the evidence submitted initially and a letter from Mr. [REDACTED] stating that the petitioner set a high standard for future members of the Rotary Club of Bombay Mid-Town. On appeal, counsel reiterates these assertions and states that the director ignored the evidence submitted.

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 may be one of a group of women who began to succeed in business in India, originality by itself is insufficient. The record lacks evidence of the influence of the petitioner's career column. Without evidence of a demonstrable impact in the field, we cannot conclude that the petitioner's contributions have been of major significance. In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(v).

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

Counsel asserted that the petitioner's career advice columns in *New Woman*, *Femina*, *Cosmopolitan* and *Savvy* and her children's book on etiquette constitutes qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi). Counsel reiterates these assertions in response to the director's request for evidence and again on appeal. The record lacks evidence that the petitioner's articles were either aimed at a scholarly audience or that they have been recognized and analyzed by scholars. In fact, in response to the director's request for additional evidence and again on appeal, in discussing the regulation at 8 C.F.R. § 204.5(h)(3)(vii), counsel refers to the petitioner's columns as "creative writing." Similarly, while the petitioner may intend her children's book to guide them towards a successful future, it remains that a children's book on etiquette is not a scholarly article in the field business. In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi).

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

In response to the director's request for evidence, counsel asserted for the first time that the petitioner was submitting qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii). Specifically, while acknowledging that the petitioner is not an artist, counsel concludes that the petitioner's columns constitute "creative writing" and that these columns, in addition to the petitioner's children's book, "are all considered to be artistic exhibition." Finally, counsel asserts that the petitioner's online courses serve as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii). The director concluded that this regulation does not apply to the petitioner's field. On appeal, counsel challenges the decision not to consider the evidence.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires evidence of the display of the petitioner's work at "artistic" exhibitions or showcases. Thus, we concur with the director that this regulation, by its very terms, does not apply to business development specialists.

The regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence where the "standards" at 8 C.F.R. § 204.5(h)(3) do not readily apply. Thus, in order to rely on comparable evidence that does not fall within the plain language of the regulation at 8 C.F.R. § 204.5(h)(3), the

petitioner must demonstrate two things: (1) that the standards set forth at 8 C.F.R. § 204.5(h)(3) do not readily apply and (2) that the evidence is, in fact, “comparable” to the evidence required under that regulation.

In this matter, counsel has asserted that the petitioner is able to submit qualifying evidence under the plain language of eight of the ten categories of evidence set forth at 8 C.F.R. § 204.5(h)(3). Thus, it is not clear how the standards in the regulation at 8 C.F.R. § 204.5(h)(3) are not readily applicable to business development specialists. Moreover, counsel has not explained how a career advice column is “comparable” to an artistic exhibition or showcase. Finally, as stated above, the petitioner’s authorship of a children’s book on etiquette is not an accomplishment in the petitioner’s field of business.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii).

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

At issue under this criterion are the nature of the role the alien was selected to fill and the reputation of the organization and establishment that selected her.

Ms. [REDACTED] and Dr. [REDACTED] indicate that the petitioner was selected as Chairperson of the “Women’s Wing” of the BMA. The petitioner submitted Internet materials confirming that BMA is “India’s most premier Management Association, established in 1954.” Ms. [REDACTED] further asserts that the petitioner was a “charter member” of GOWA and was chosen as “Chapter of Guild for Bombay.” A 2001 issue of *Cosmopolitan* lists the petitioner as one of the magazine’s “experts” and the Chairperson of the Mumbai Management Association, Women in Management Committee. The petitioner’s chapter in *A Business of Her Own* indicates that she founded a business, E’l Dorado, that eventually employed 85 individuals and had a “turnover” of 800,000,000 Rupees. The chapter also indicates that the petitioner founded Think and Grow Rich Relief, a trust set up for the education, medical relief and general uplift of the poor. As noted by counsel on appeal, the director did not consider this evidence. We withdraw the director’s finding that no evidence was submitted under 8 C.F.R. § 204.5(h)(3)(viii) and conclude that the evidence submitted qualifies under that regulation.

*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 an August 13, 2009 letter from [REDACTED], an accountant, affirming that in assessment year 2001-2002, the petitioner earned a salary of 841,244 Rupees and additional remuneration of 229,514 Rupees. Counsel implies that while the petitioner’s salary amounts to only \$19,318.51, in India, it is “the approximate equivalent” of a Chief Executive Officer’s “monthly” income of \$150,000, which is “now” between \$250,000 and \$350,000 “per year.” Counsel makes a similar assertion regarding the petitioner’s other remuneration. The petitioner did not submit any

exchange rates or evidence of high level remuneration of Indian business executives in 2001 and 2002 or even currently.

The director concluded that the petitioner had not submitted evidence that the petitioner's remuneration was significantly high in her field. On appeal, counsel asserts that the director's conclusion was in error given counsel's personal characterization of the petitioner's remuneration equivalency in the United States.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel provides no support for the assertion that an annual salary equivalent to \$19,318.51 in India is actually equivalent to earning \$150,000 monthly or even annually in the United States.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence of a significantly high remuneration "in relation" to others in the field. Thus, it is an evidentiary requirement that the petitioner provide some basis for comparing the petitioner's remuneration with others in the field. The petitioner did not submit government or other reliable data demonstrating that total remuneration of 1,070,758 Rupees in 2002 was significantly high for business executives in India.<sup>6</sup> As such, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ix).

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

In response to the director's request for additional evidence, counsel asserted for the first time that the petitioner had submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(x). Counsel acknowledges that the petitioner's field is not in the performing arts but concludes that it "can be, and is, of extraordinary ability and outstanding achievement." It does not logically follow from the potential to reach extraordinary ability and outstanding achievement in business that this field is actually within the performing arts under 8 C.F.R. § 204.5(h)(3)(x). As evidence under this category, counsel references the accountant letter regarding the petitioner's remuneration. Counsel does not explain how the petitioner's remuneration, which is relevant to 8 C.F.R. § 204.5(h)(3)(ix), also relates to 8 C.F.R. § 204.5(h)(3)(x), which requires "box office receipts" or media sales data. Finally, counsel asserts that the petitioner's career advice columns and speaking engagements constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(x).

On appeal, counsel asserts:

Petitioner/Beneficiary is also a professor for the online university of Personalitree and not only a **distinguished professional and businesswoman of exceptional ability and**

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<sup>6</sup> An immigrant visa in the petitioner's behalf, LIN-07-104-54056, indicates a proposed salary of only \$62,400 annually. Internal Revenue Service Forms W-2 submitted in support of that petition reflect the following remuneration: \$45,796.08 in 2003, \$35,701.32 in 2004, \$39,752.64 in 2005 and \$51,481.65 in 2006.

**outstanding achievement**, she is also sought by popular journals, magazines, as well as was selected to write online workshop modules, to provide expert advise [*sic*], woman achiever and role model for the suppressed women in India. There were articles written about [the petitioner] and, not only articles, but a **WHOLE CHAPTER** where Petitioner/Beneficiary . . . was featured.

(Emphasis in original.)

None of the evidence referenced by counsel is indicative of commercial success in the performing arts, which is not the petitioner's field. Even if we were to consider comparable evidence under this criterion, the petitioner submits no comparable evidence to box office receipts and media sales data, such as official data showing that the petitioner's speaking engagements sell out or that her online course is purchased significantly more often than other online courses nationwide in India. While we acknowledge that the petitioner is featured in a book chapter, the record contains no evidence of the commercial success of this book and even if such evidence had been submitted, this evidence constitutes published material about the petitioner. Unlike a professional author whose own books garner commercial success, a book including a chapter *about* the petitioner is not evidence of her personal commercial success.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(x).

### *Summary*

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

### ***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." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 2010 WL 725317 at \*3.

At the outset, it is significant that the petitioner must demonstrate *sustained* national or international acclaim. Section 203(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(3). Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the

field of endeavor who enjoyed sustained national or international acclaim in 2008 when she filed the petition.

The petitioner relies on honor certificates issued between 1987 and 2001, membership certificates dated 1995 through 1999, newspaper articles from 1997 through 2001 that quote her but are not about her, books published in 1997 and 1998, advice columns mostly authored prior to 2002 with one column dated in 2005, roles with Indian companies and business organizations that are not alleged to have continued past 2000 and remuneration from 2002. The petition was filed on October 10, 2008. With the exception of the assertion that the petitioner appeared in *Who's Who in Finance and Business* in 2004 and her single advice column published in 2005, all of the evidence predates the filing of the petition by nearly seven years.

The evidence appears commensurate with a successful businesswoman with extensive experience<sup>7</sup> but does not rise to the level of demonstrating that the petitioner was one of the small percentage who had risen to the top of her field of endeavor in India. Moreover, she has not demonstrated any recognition proximate to the filing of the petition. As noted above, the petitioner's salary between 2003 and 2006 never exceeded \$51,481.65. While not determinative, these salaries are consistent with our conclusion that even if the petitioner previously enjoyed recognition in her field, she has not sustained her prior level of recognition.<sup>8</sup> Regarding the evidence dated 2004 and 2005, we are not persuaded that appearing as one of possibly hundreds of thousands of professionals in an annual for-profit directory that allows professionals to submit their own biographies for inclusion and a single advice column demonstrate that the petitioner sustained any previous recognition after 2002. Even these two more recent pieces of evidence predate the filing of the petition by at least three years. Thus, the petitioner has not established that she has sustained any recognition she may have enjoyed prior to 2002 in 2008 when she filed the petition.

### III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a business development specialist 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 indicates that the petitioner shows some earlier recognition in business, but is not persuasive that the petitioner's achievements currently set her significantly above almost all others in her field.

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<sup>7</sup> Experience is only relevant to determinations of exceptional ability, a lesser classification set forth at section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(B).

<sup>8</sup> We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(3) does not require evidence pertaining to any one of the ten included categories of evidence so long as evidence qualifying under three categories is submitted. Thus, a significantly high salary or other remuneration is not required for eligibility.

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 visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.