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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

FILE:

Office: TEXAS SERVICE CENTER

Date:

DEC 07 2010

IN RE:

Petitioner:

Beneficiary:

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:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on August 16, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his 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 “sustained national or international acclaim” and present “extensive documentation” of his or her 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 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 claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 the petitioner demonstrate his or her 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*, 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.

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).

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).

II. The Petitioner's Field of Expertise

At the time of the original filing of the petition, in Part 5 and Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner indicated that his occupation, job title, and nontechnical description of job were "not applicable." In counsel's cover letter, he stated:

[The petitioner] is an expert in the field of technology and government: the role of freedom of Internet in reforming non-democratic governments toward democracy in the Middle East and establishing civil society and human rights principles in theocratic governments.

Moreover, on appeal, counsel stated:

[The petitioner], an Iranian national, is an expert in the field of technology and government: the role of freedom of Internet in reforming non-democratic governments toward democracy in the Middle East and establishing civil society and human rights principles in theocratic government. His activities and accomplishments during the last twenty years have distinguished him as one of the few individuals at the top of his field of expertise. With his background in Information Technology coupled with his enormously successful political and legislative experience, [the petitioner] became highly influential in reforming the Iranian government as well as advancing Iranian society in different ways.

We note that counsel failed to relate the petitioner's claimed field of endeavor in technology and government to any of the fields enumerated in section 203(b)(1)(A)(i) of the Act. We must presume that the phrase "in the sciences, arts, education, business, or athletics" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). The "exceptional ability" classification, now under section 203(b)(2) of the Act, existed prior to the enactment of the Act. When the Act was amended in 1990, there existed case law interpreting "arts" as including "athletics." The extraordinary ability classification, however, was an entirely new classification. Thus, Congress chose the fields for this new classification very specifically, expressly adding "athletics" to section 203(b)(1)(A) of the Act, whereas it did not do so under section 203(b)(2) of the Act where it was already presumed to fall within the "arts." "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987). Thus, Congress was capable of expanding the fields previously recognized and chose not to expand the list of fields other than by adding athletics. If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics." As Congress *did* use that phrase, it can be presumed that there may be aliens of extraordinary ability, who enjoy sustained national or international acclaim, that are nevertheless ineligible for classification under section 203(b)(1)(A) *solely* because their occupation does not fall within the sciences, arts, education,

business, or athletics. To hold otherwise would render the clear and plain language of the statute meaningless and undermine Congressional intent.

In this case, the petitioner must establish that his claimed expertise of technology and government falls within at least one of the fields - sciences, arts, education, business, or athletics. While we acknowledge that the broad nature of the petitioner's field of technology and government could correspond with business and/or education, a review of the record of proceeding fails to reflect that the petitioner's documentary evidence demonstrates that he has sustained national or international acclaim in either of these fields. Although the petitioner *now* appears to be involved in education, the documentary evidence in the record proceeding relates only to his commitment to human rights and political activism. Again, however, the petitioner failed to establish that his claimed political and humanitarian achievements relate to any of the fields enumerated in section 203(b)(1)(A).

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the petitioner's claimed past experience in government and as an activist could qualify him in the field of education or business, the documentary evidence submitted by the petitioner does not relate to either of these fields. Rather, the evidence relates almost exclusively to his political and humanitarian notoriety as a member of parliament. In other words, the petitioner failed to establish that his previous governmental experience, political activism, and humanitarian advocacy falls within any of the classifications pursuant to section 203(b)(1)(A) of the Act. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim in any of the classifications pursuant to section 203(b)(1)(A)(i) of the Act. While the petitioner submitted current documentary evidence, such as a job letter from [REDACTED], reflecting that the petitioner was appointed for one year as a visiting fellow in the Iranian Studies Program on March 1, 2010, that reflects the petitioner is currently pursuing a classification of education, the documentary evidence submitted by the petitioner to meet at least three of the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) fails to reflect sustained national or international acclaim in education, business or any of the other remaining fields listed in section 203(b)(1)(A)(i).

Where the language of the statute is clear on its face, there is no need to inquire into congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984); *Shaar v. INS*, 141 F. 3d 953, 956 (9th Cir. 1998);

Matter of Lemhammad, 20 I&N Dec. 316 (BIA 1991). Congress' language limiting the fields for extraordinary ability to the sciences, arts, education, business, and athletics is clear.

As the petitioner has not established that his documentary evidence falls within the sciences, arts, education, business, or athletics, any further discussion of the evidence under the regulatory criteria is moot. Nevertheless, for purposes of thoroughness, we will address the evidence below.

III. Translations

As indicated by the director in his decision, the record of proceeding reflects that the petitioner submitted numerous non-certified English language translations, partial translations, summary translations, and foreign language documents without any English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Although at the time of the original filing of the petition counsel attached an "Affidavit of Translation" to his brief certifying that he "translated/verified the documents which are attached to this Affidavit" and certified that the translations were "true and accurate," a review of the record of proceeding reflects that the translations and certification do not comply with the regulation. First, the submission of a single certified translation for multiple foreign language documents is of no value if it does not specify the exact documents to which it pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

Furthermore, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires a "full English language translation." Counsel, however, submitted only summary translations. In fact, counsel provided single summary translations that purportedly summarized multiple foreign language documents. For example, counsel submitted a single summary translation from three newspapers claiming that it only reflected an "[a]nnouncement of development of information technology projects in Iran" from [REDACTED]. Such scant summary translations for single or multiple documents fail to comply with the regulation at 8 C.F.R. § 103.2(b)(3).

In the director's request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the director informed the petitioner that:

[The petitioner] did not include an English translation of some of the published materials [that the petitioner] submitted. All foreign documents must include an

English translation. Furthermore, [the petitioner] must submit an English translation of the entire article [emphasis in original].

In response to the director's request for evidence, counsel claimed that "[t]he cost and time require[d] translating all the news articles is an extreme hardship to the petitioner." The arguments by counsel are not persuasive. As cited above, the plain language of the regulation at 8 C.F.R. § 103.2(b)(3) requires a "full English language translation (emphasis added)." Moreover, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); section 291 of the Act; 8 U.S.C. § 1361. The cost and time incurred by the petitioner to translate the petitioner's own documentation do not relieve or excuse the petitioner from the regulatory requirement of submitting full and certified translations.

In addition, counsel submitted a "few articles picked and fully translated in English." However, as indicated in the director's denial of the petition, counsel did not submit the foreign language documents with the English translations. While the petitioner may have submitted the documents at the time of the original filing of the petition, those documents were in a foreign language. It is not incumbent on the director to guess or infer which translations relate to the originally submitted foreign language documents. The burden is on the petitioner to establish eligibility. *See Matter of Brantigan*, 11 I&N Dec. at 493; section 291 of the Act; 8 U.S.C. § 1361.

Notwithstanding the above, counsel failed to submit certified translations of the documents. 8 C.F.R. § 103.2(b)(3). However, on appeal, counsel stated that "we have enclosed the Certificate of Translation by the original translator of his articles submitted in his Answer to the Request for More Evidence." As cited above, the submission of a single certified translation for multiple foreign language documents is of no value if it does not specify the documents to which it pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

As will be specifically addressed in various places in this decision, because the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

IV. Primary Evidence

While not addressed by the director, the record of proceeding reflects that the petitioner failed to submit primary evidence of his eligibility for some of the criteria. The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

- (i) The non-existence or other unavailability or required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage

certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

As indicated above, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, while the petitioner submitted secondary evidence, such as screenshots from websites and newspaper and magazine articles, the petitioner failed to submit any documentary evidence demonstrating that primary evidence does not exist or cannot be obtained. As such, the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(2), and the AAO will not consider the petitioner's secondary evidence. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

V. Assertions of Counsel

The record of proceeding contains numerous claims by counsel of the petitioner's eligibility for several of the criteria pursuant to 8 C.F.R. § 204.5(h)(3). However, counsel failed to submit any documentary evidence supporting his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2

(BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

VI. Analysis

A. Evidentiary Criteria

The petitioner, who last entered the United States as an F-1 nonimmigrant student to attend English language training classes, has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on the following:

1. Human Rights Watch [REDACTED] January 2010;
2. The speaker of the [REDACTED] 2004;
3. The [REDACTED] [REDACTED] 2004; and
4. The Central Council of the Iranian Students Union (CCISU), [REDACTED] [REDACTED] 2003.

We note that counsel did not provide any specific statement or argument regarding any of these claims but simply listed the above items in his letter in support of the petition. Furthermore, with the exception of item 1, counsel failed to submit any documentary evidence for any of the items. Regarding item 1, the petitioner submitted a letter from [REDACTED] who stated:

I am pleased to inform you that the [REDACTED] has awarded you this prestigious grant in recognition of your tireless efforts to promote and protect international standards for human rights in Iran. You were nominated by [REDACTED] for Human rights in Iran.

Let me give you a little history about the [REDACTED] grant program. It fulfills the wishes of the [REDACTED] who left money in her estate to help writers who had been victims of political persecution.

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

* * *

We are pleased to be able to make this gesture in recognition of your courage in defense of human rights and in support of free expression.

In response to the director's request for evidence, regarding item 1, counsel submitted screenshots from www.hrw.org reflecting:

- A. [REDACTED] grant program for writers all around the world who have been victims of political persecution and are in financial need;
- B. Recipients are writers and activists whose work and activities have been suppressed; and
- C. [REDACTED] grants aim to help writers who dare to express ideas that criticizes official public policy or people in power.

Regarding items 2 – 4, counsel failed to submit any documentary evidence but claimed the following:

Regarding item 2, counsel claimed:

The award is in Iran and confiscated by the government.

This award was presented to handful of [members of parliament] due to their legislative achievements” and “[the petitioner] was awarded one of the most effective and progressive member of the Sixth Parliament due to promulgating ground breaking acts and protecting individual’s rights by using invested constitutional rights invested in the Parliament.

Regarding item 3, counsel claimed:

At the end of the [SIAUAT] granted an award and recognition of his activities as a member of Parliament in protecting student’s rights and interests.

Regarding item 4, counsel claimed:

The award granted to [the petitioner] for his activities and accomplishments in the Sixth Parliament

The indication of this award is that [the petitioner’s] track record as [a member of parliament] was approved by majority of student organizations.

In the director’s decision, he found that the documentary evidence submitted by the petitioner failed to establish eligibility for this criterion. On appeal, counsel argued that “the Director

failed to consider all of [the petitioner's] awards in light of his underlying achievements" and claimed that documents were provided for all four items listed above. Contrary to counsel's assertions, as indicated above, counsel failed to provide any documentary evidence regarding items 2 – 4. As such, we are not persuaded by counsel's arguments on appeal and find that the director did not err in his decision regarding these items. Notwithstanding, counsel submitted documentation on appeal regarding all four items.

Regarding item 1, counsel reiterated his previous arguments, submitted the previously mentioned screenshots from www.hrw.org, and submitted the following new documentation:

- i. A screenshot from www.earthtimes.org reflecting that "[t]he [redacted] grants are given annually to writers around the world who have been targets of political persecution or human rights abuses";
- ii. A screenshot from www.upi.com reflecting that "[HRW] hands out the [redacted] grants to writers around the world who have been targets of political persecution"; and
- iii. A screenshot from www.irrawaddy.org reflecting that [redacted] administers the [redacted] grants, awarded to writers and artists around the world who have been targets of political persecution."

Regarding item 2, counsel claimed:

The Speaker of the Sixth Parliament presented [the petitioner] with an award in recognition of his ground breaking service. The award named him as one of the most effective and progressive members of the Sixth Parliament for his work towards protecting individual rights. . . . Although this award is not presented annually, its significance and distinction stems from being presented by the Speaker of the Sixth Parliament of Iran. This attribute indicate the award's national stature. Furthermore, the award's objective, naming [the petitioner] as one of the most effective and progressive members of the Sixth Parliament indicates the outstanding achievement underlying the award.

Counsel submitted a letter from [redacted] (unidentified first name), the Speaker of the Sixth Parliament, who stated:

At the end of the Sixth Parliament after consideration of all the factors the committee voted to recogniz[e] [the petitioner's] achievements in his official capacity and significant role. Subsequently, [redacted] grant[ed] him an Award in recognition of his extraordinary and effective activities as the representative of Tehran in the Sixth Parliament of Iran.

Regarding item 3 and 4, counsel claimed:

[The petitioner] received awards from [CCISU] and [SIAUAT]. Both organizations presented awards to [the petitioner] in recognition of his exceptional advocacy and his outstanding achievements, which included facilitating the release of hundreds of students illegally detained, advancing the privatization and expansion of Iran's data networks, expediting the democratization process, and protecting individual rights and freedoms. . . . These two organizations made note of the initiatives [the petitioner] lead, the legislations he passed, and the actions he took as a Parliament Member, further conveying the outstanding nature of [the petitioner's] achievements on which the awards are based.

Counsel submitted a letter from [REDACTED] who stated:

In 2004, our organization have [sic] granted him the Award and Certificate of Appreciation at the main hall of the university when I was the Secretary.

* * *

[W]ith super majority of the votes selected [the petitioner] as the most loyal representative to its constituents particularly the students' demands for democracy, and the best [member of parliament] of the sixth Parliament. This award was presented to him during a ceremony at the main hall of the University in 2004.

In addition, counsel submitted a letter from [REDACTED] who stated:

[W]e have selected him by our central committee vote as the best member of the Sixth Parliament. We hold a ceremony and representative from hundreds of student organization attended to congratulate him and thank him for his efforts and initiatives which helped the reform and democratization projects in Iran. [The petitioner's] achievements were never repeated by any other representative.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for *excellence in the field of endeavor* (emphasis added).” Furthermore, it is the petitioner’s burden to establish every element of this criterion. Regarding [REDACTED] we are not persuaded that the submitted documentary evidence is reflective of excellence in the petitioner’s field of endeavor, which was claimed as technology and government. Rather, as cited above, [REDACTED] grants recognize “courage in defense of human rights and in support of free expression,” “whose work and activities have been suppressed,” “who dare to express ideas that criticizes official public policy or people in power,” and “targets of political persecution or human rights abuses.” [REDACTED] grants are not reflective of awards or prizes for excellence in the field of endeavor. Instead, [REDACTED] grants are given to individuals who expressed criticism of their government and who “are in financial need.” We are not persuaded that being recognized for being politically persecuted or

suppressed equates to excellence in the field much less the claimed fields of technology and government.

Regarding the award from the Sixth Parliament, the petitioner failed to submit primary or secondary evidence of the award or evidence that the award cannot be obtained. Although counsel claimed that “[t]he award is in Iran and confiscated by the government,” he failed to submit any documentary evidence supporting his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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. We further note that counsel failed to provide the name of the award and only referenced it as an “Award.” Notwithstanding, while the letter from ██████████ explained why the parliamentary committee voted to recognize the petitioner’s achievements, the petitioner failed to submit any documentary evidence establishing that the “Award” is nationally or internationally recognized for excellence. Merely submitting a letter indicating that the petitioner received an “Award” is insufficient to establish that the “Award” is nationally or internationally recognized for excellence in the field.

Similarly, the petitioner failed to submit primary or secondary evidence of his awards from SIAUAT and CCISU or evidence that the awards cannot be obtained. Instead, the petitioner relied solely on two letters. Nonetheless, while the letters described the reasons why the petitioner received the awards, the petitioner failed to establish that his awards from SIAUAT or CCISU are nationally or internationally recognized for excellence in the field. Again, simply submitting letters reflecting that the petitioner received awards are insufficient to demonstrate eligibility for the plain language of this criterion without evidence demonstrating that the awards are nationally or internationally recognized for excellence in the field of endeavor.

As discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner to establish his receipt of nationally or internationally recognized awards in the field of endeavor, and it is the petitioner’s burden to establish every element of this criterion. In this case, the petitioner failed to submit documentary evidence of his receipt of nationally or internationally recognized awards for excellence in his field of endeavor.

Accordingly, the petitioner failed to establish that he 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.

At the time of the original filing of the petition, counsel claimed the petitioner’s eligibility for this criterion based on the following:

1. Member of the Sixth Parliament of Iran;

2. Deputy Chairman of Telecommunication Committee;
3. Member of Industries Committee, Sixth Parliament;
4. Member of Central Committee, the Office of Strengthening Unity [REDACTED]; and
5. Member of The Century Foundation (TCF) Working Group on Iran.

We note that counsel did not provide any specific statement or argument regarding any of these claims but simply listed the above items in his letter in support of the petition. However, counsel submitted the following documentation:

- A. A translation of a letter that fails to identify the name of the writer of the document but indicates that he is the Chairman of Administrative Organization. We note that counsel failed to submit the original document to which the translation pertains. Regardless, the translation reflects:

[The petitioner] had rendered his duties in the sixth course of Islamic Consultative Assembly (from May 28, 2000 till May 27, 2004) as an honorable representative of Tehran. He had been also admitted as a member of [REDACTED],

- B. A screenshot from www.wikipedia.org regarding the Iranian legislative elections in 2000; and
- C. An uncertified, partial, and summary translation of a document from the Iranian Labor News Agency stating:

The petitioner was selected by the vote of General Assembly of the Office for Strengthening Unity ([REDACTED]) as one of the principal members of its Central Committee for a period of two years.

In response to the director's request for evidence, counsel submitted the following documentation:

- i. A screenshot from www.servate.unibe.ch regarding the legislative powers of the ICA reflecting that "[ICA] is constituted by the representatives of the people elected directly and by secret ballot";

- ii. An uncertified translation of a document reflecting the Internal Proceeding Rules for the ICA. We note that counsel failed to submit the original document to which the translation pertains;
- iii. A screenshot from www.tcf.org regarding TCF;
- iv. A document reflecting the history, mission, and trustees of TCF;
- v. A screenshot from [REDACTED] insideiran.org to Provide Insiders' View of Political Crisis in Iran";
- vi. A press release from the TCF entitled [REDACTED]
- vii. A screenshot from [REDACTED]"; and
- viii. An uncertified translation of a document regarding the Alumni Association of Islamic Iran reflecting that the petitioner was "inducted into the Central Council." We note that counsel failed to submit the original document to which the translation pertains.

In the director's decision, he found that the petitioner's membership in the parliament of Iran and TCF failed to reflect that it was based upon outstanding achievements. Moreover, the director found that the petitioner failed to establish that he was a member of TCF. On appeal, counsel argues:

[I]n [the petitioner's] field of government, winning an election is in fact, the quintessential verification of achievement. [The petitioner] was elected with over one million votes from the Tehran District. . . . Winning an election for such a prestigious leadership position from the Tehran District goes beyond a demonstration of minimum education, experience, or achievement. Thus, [the petitioner] satisfies the criteria of belonging to an association, which in this case is the Sixth Parliament of Iran, wherein membership requires outstanding achievement in the form of winning an election. Additionally, [the petitioner] was elected to the position of Deputy Chairman of the Telecommunication Committee by his peer Parliament Members. Fellow Parliament Members are a selected group of individuals who qualify as national experts in [the petitioner's] field of government. These groups of experts articulated their judgment of [the petitioner's] outstanding achievement by selecting him to serve as Deputy Chairman of a Parliament Committee.

* * *

[The petitioner's] outstanding achievements in his field are further corroborated by [the petitioner's] receipt of an invitation from the [TCF's] Working Group on Iran to participate in a select advisory group. The Director found the invitation to be insufficient because it only showed an invitation to participate in the advisory group and not actual participation with the group. For this reason, we are offering additional evidence to verify the existence of [the petitioner's] membership in the aforementioned advisory group.

* * *

[The petitioner's] position as a Member of the Sixth Parliament of Iran, as the Deputy Chairman of the Telecommunications Committee, and as a Member of the Industries Committee coupled with the invitations he receives from multiple international organizations to be a part of this notable international effort in helping Iranians reform the political system and devising balanced foreign policies towards Iran further evinces [the petitioner's] sustained national or international acclaim as an individual with extraordinary ability in his field. The long list of conference participations and meeting . . . with influential actors in policy arena reflect this fact.

Counsel submitted the following documentation on appeal:

- a. The previously mentioned letter from [redacted] who stated that the petitioner "was elected with more than a million votes from the district of Tehran to the Sixth Parliament";
- b. A letter from [redacted] who indicated that the petitioner was a member of [redacted]
- c. [redacted] Report entitled "Dealing with Iran, Time for a 'Middle Way' Between Confrontation and Conciliation"; and
- d. A document entitled [redacted] [the petitioner]" reflecting purported meetings with 23 individuals.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In order to demonstrate that membership in an association meets this criterion, a 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.

Notwithstanding that the petitioner submitted uncertified and partial translations, as well as failing to submit the original documents to which the translations pertain, we are not persuaded that the petitioner's membership with the Sixth Parliament of Iran, as well as membership in various committees within the government, meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), which requires that membership in associations require outstanding achievements, *as judged by recognized national or international experts*. The petitioner failed to establish that his election to the Sixth Parliament was judged by recognized national or international experts. Instead, the documentary evidence reflects that he was elected based on the popular vote. We are not persuaded that winning the popular vote in an election demonstrates outstanding achievements.

We acknowledge that the record of proceeding contains sufficient documentation to establish that the petitioner was a member of the respective committees for items 2 – 4. However, the petitioner failed to submit any documentary evidence establishing that his membership on any of these committees requires outstanding achievements, as judged by recognized national or international experts. Merely submitting documentary evidence reflecting the petitioner's membership with a particular association or evidence that he served on a governmental committee without evidence reflecting that the petitioner's membership with an association requires outstanding achievements of its members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation. It is the petitioner's burden to establish every element of this regulatory criterion.

Regarding [REDACTED] in the letter from [REDACTED] she stated:

The Iran Working Group Members are selected from among many influential foreign policy actors. This group includes members from the U.S. State Department, European Union, European consular staff in the United States, politicians and staff members of key U.S. Senators on the Foreign Relations Committee, reputable foreign policy institutions and think tanks, and information technology experts.

While [REDACTED] indicated that membership is "selected from among many influential foreign policy actors," [REDACTED] letter falls far short in reflecting that membership in [REDACTED] requires outstanding achievements, as judged by recognized national or international experts. We are not persuaded that being "influential" equates to outstanding achievements. In addition, [REDACTED] failed to indicate the selection process for membership. Furthermore, while the petitioner submitted background information regarding [REDACTED] the documentary evidence fails to reflect the membership requirements for [REDACTED] so as to establish that membership with [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts. Again, overall prestige or mission of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Finally, as indicated in item d, counsel submitted a list of meetings purportedly conducted by the petitioner. Counsel failed to submit any supporting documentation to establish that the petitioner met with any of the individuals on the list. Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the petitioner demonstrate his membership in associations. Even if the petitioner established that he met with the individuals, the petitioner failed to establish how his meetings demonstrate eligibility for the plain language of this regulatory criterion. Simply meeting with individuals who represent organizations or associations fails to establish the petitioner's membership in associations.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on uncertified, partial, and summary translations, as well as documentary evidence without any translations. As the documentary evidence fails to comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the evidence is not credible, and we will not further address the evidence. The following documentation was submitted in the English language:

1. An article entitled, [REDACTED] on Satellite TV," December 17, 2002, unidentified author, Agence France Presse;
2. An article entitled, [REDACTED] [REDACTED] May 16, 2005, unidentified author, Agence France Presse;
3. An article entitled, [REDACTED] [REDACTED] June 12, 2001, unidentified author, Agence France Presse;
4. A screenshot entitled, [REDACTED] to be Impeached," October 31, 2003, unidentified author, www.payvand.com;
5. A screenshot entitled, [REDACTED] [REDACTED] August 25, 2004, unidentified author, www.payvand.com;
6. A screenshot entitled, [REDACTED] [REDACTED] September 26, 2008, unidentified author, www.payvand.com;

7. A screenshot entitled, [REDACTED] [REDACTED] September 14, 2000, unidentified author, www.cnn.com;
8. A screenshot entitled, [REDACTED] [REDACTED] June 25, 2003, unidentified author, www.aljazeera.info;
9. An untitled article, February 2, 2004, unidentified author, Iran News Agency;
10. A screenshot entitled, [REDACTED] unidentified date, [REDACTED] www.atimes.com;
11. A screenshot entitled, [REDACTED] April 30, 2003, [REDACTED] www.guardian.com;
12. A screenshot entitled, [REDACTED] August 15, 2006, unidentified author, www.nytimes.com;
13. An article entitled, "[REDACTED] [REDACTED] December 7, 2003, [REDACTED] www.nytimes.com;
14. An article entitled, [REDACTED] March 18, 2010, [REDACTED] www.nytimes.com;
15. A screenshot entitled, "[REDACTED] April 22, 2010, [REDACTED] www.antiwar.com;
16. A screenshot entitled, [REDACTED] April 23, 2010, [REDACTED] www.ipsnews.net;
17. An article entitled, [REDACTED] Activists Say Hardware is Needed to Evade Web and Satellite Jamming," March 20, 2010, [REDACTED] *The International Herald Tribune*;
18. An article entitled, [REDACTED] unidentified date, Fareed Zakaria, *Newsweek*;
19. A screenshot entitled, [REDACTED] February 3, 2004, unidentified author, www.cbsnews.com;
20. A screenshot entitled, [REDACTED] March 6, 2007, unidentified author, www.humanrightsfirst.org;

21. A screenshot entitled, [REDACTED] June 13, 2006, unidentified author, www.humanrightsfirst.org;
22. A document entitled, [REDACTED] August 2, 2006, [REDACTED] State Department Documents and Publications;
23. An article entitled, [REDACTED] August 12, 2006, [REDACTED];
24. A screenshot entitled, [REDACTED] [REDACTED] March 8, 2004, unidentified date, www.dailytimes.com;
25. A screenshot entitled, [REDACTED],” March 7, 2004, unidentified author, www.aljazeera.net; and
26. A screenshot entitled, [REDACTED] unidentified date, [REDACTED] www.wsj.com.

In response to the director’s request for evidence, as cited previously, counsel submitted selected uncertified translations that also lacked the original documents to which they pertain. As the documentary evidence is of no evidentiary value without the requisite certified translations, will not further address the evidence here. We note that counsel submitted the following two documents:

- A. A screenshot entitled, [REDACTED] July 27, 2010, [REDACTED] www.nytimes.com; and
- B. A partial article entitled, “Iranian Exiles Struggle to Influence Homeland,” July 28, 2010, unidentified author, *The New York Times International*.

In the director’s decision, he found that the submitted documentary evidence failed to establish eligibility for this criterion. On appeal, counsel argues:

The denial letter stated that the articles submitted failed to have certification of translation and the newspapers were not nationally circulated. To overcome these issues, we have enclosed a letter by [REDACTED] who confirms the national circulation of the newspapers referenced in [the petitioner’s] petition. . . . In addition, we have enclosed the Certificate of Translation by the original translator of his articles submitted in his Answer to the Request for More Evidence. . . . Particularly notable is the article in Computer and Communication World Magazine, the most reputable magazine in [the

petitioner's] field in Iran. However, the Director only made note of three articles in his decision to deny [the petitioner's] petition.

Again, while counsel submitted on appeal a "Certificate of Translation by the original translator," the submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, while counsel submitted a letter from [redacted] stating that *Hamshahri, Iran, Hambastegi, Tose'e, Etemad, Hayat e No, Mardom Salari, Yase No, Aftab e Yazd, and Karo Karegar* are "reputable and nationally circulated print publications," counsel failed to submit full and/or certified translations of the articles from any of these publications. As such, the determination if the articles were published in professional or major trade publications or other major media is moot. Notwithstanding, we are not persuaded that a single letter that generally claims that various publications are nationally circulated demonstrates that they are professional or major trade publications or other major media. [redacted] failed to provide any specific details in her letter or further documentation to support her claims.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the New York Times, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." We note here that the petitioner submitted several articles that were posted on the Internet. However, we are not persuaded that articles posted on the Internet from a printed publication are automatically considered major media. The petitioner failed to submit independent, supporting evidence establishing that the websites are considered major media. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, we are not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding items 1 – 3, the petitioner failed to include the authors of the articles. Moreover, the articles are not primarily about the petitioner. Regarding item 1, the article is about Iran's reformist parliament vote to end a national ban of satellite television. In fact, the petitioner is mentioned only one time in the article as contributing a quote. Regarding item 2, the article is

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

about boycotting the Iranian presidential election. The petitioner is mentioned only one time as being barred from standing in the 2004 elections. Regarding item 3, the article is about the jailing of an Iranian investigative journalist, Akbar Ganji. The petitioner is only mentioned one time as being denied meetings with Akbar Ganji in jail.

Regarding items 4 – 6, the petitioner failed to include the author and failed to submit any documentary evidence establishing that www.payvand.com is a professional or major trade publication or other major media. Regarding item 4, while the petitioner is cited one time, the screenshot is not about the petitioner but the impeachment of [REDACTED]. Regarding item 5, while the petitioner's name is cited one time, along with at least 17 other individuals, the article is about 150 reformist journalists and politicians protesting limitations on press in Iran. Regarding item 6, while the petitioner is mentioned as being allowed to leave prison to attend a memorial for his father, the article is about the crackdown against peaceful critics in Iran.

Regarding item 7, the petitioner failed to include the author of the screenshot. In addition, although the petitioner provided some quotations, the screenshot is not about the petitioner; rather the screenshot is about the closing of Tohid prison in Iran.

Regarding item 8, the petitioner failed to include the author of the screenshot. Moreover, the petitioner failed to submit any documentary evidence demonstrating that www.aljazeera.info is a professional or major trade publication or other major media. Further, the screenshot is not about the petitioner. Instead, the screenshot is about the urging of [REDACTED] by reformist lawmakers to take a stand over arrests.

Regarding item 9, the petitioner failed to include the title and author of the article. Furthermore, the petitioner failed to submit any documentary evidence establishing that Iran News Agency is a professional or major trade publication or other major media. Regardless, the article is about 125 parliament deputies offering resignation letters in protest to the disqualification of nominees for the 7th Majlis elections. The petitioner's name was merely listed with the other 124 deputies.

Regarding item 10, the petitioner failed to include the date of the screenshot. In addition, the screenshot is not about the petitioner; instead the screenshot is about [REDACTED]. Further, the petitioner failed to submit any documentary evidence establishing that www.atimes.com is a professional or major trade publication or other major media.

Regarding item 11, although we acknowledge that the screenshot is about the petitioner, it does not otherwise meet the plain language of the regulation. First, the article is about the petitioner facing arrest “after judicial authorities accused him of undermining Iran’s national interests by informing UN human rights monitors about alleged abuses of political prisoners.” Specifically, the petitioner was accused “of discussing with UN monitors the case of two reformers who were jailed after publishing a poll” The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material “relat[e] to the alien’s work in the field for which classification is sought.” In this case, we are not persuaded that the screenshot relates to

the petitioner's claimed field of technology and government. The petitioner has also failed to establish that the publication is a professional or major trade publication or other major media.

Regarding items 12 – 14, the articles are not about the petitioner. Regarding item 12, notwithstanding that the petitioner failed to include the author of the screenshot, the article is primarily about [REDACTED] with the petitioner mentioned as being in prison. Regarding item 13, the screenshot is about the Iranian election and the reform movement. Regarding item 14, the screenshot is about the effect of sanctions on various online services in Iran.

Regarding item 15 and 16, the petitioner failed to submit any documentary evidence establishing that www.antiwar.com and www.ipsnews.net are professional or major trade publications or other major media. We note that the articles are identical but posted on different websites. The screenshots are not about the petitioner; rather the screenshots are about the development of software that would evade censors in Iran.

Regarding item 17, while the petitioner was quoted in the article, the article is about the decision of the United States to lift sanctions of various online services.

Regarding item 18, the petitioner failed to include the date of the article. Similar to item 17, while the petitioner was quoted one time in the article, it is primarily about the debate over the Iranian nuclear program.

Regarding item 19, the petitioner failed to include the author of the screenshot. In addition, the screenshot is about [REDACTED] not delaying or postponing elections.

Regarding items 20 and 21, the petitioner failed to include the author of the screenshots. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that www.humanrightsfirst.org is a professional or major trade publication or other major media. Also, the screenshots are about the rights of women leaders in Iran and the request for support.

Regarding item 22, the document is primarily about the death of a jailed Iranian student dissident, [REDACTED] and not about the petitioner.

Regarding item 23, the article is about Iran's crackdown on [REDACTED]. While the petitioner is briefly mentioned one time as being detained at a rally for women's rights in Tehran, Iran, the article is not about the petitioner. In addition, the petitioner failed to submit any documentary evidence establishing that *The Age* is a professional or major trade publication or other major media.

Regarding item 24 and 25, the petitioner failed to include the authors of the screenshots. We note that the articles are identical but posted on different websites. Moreover, the petitioner failed to submit any documentary evidence reflecting that www.dailytimes.com and www.aljazeera.net are professional or major trade publications or other major media.

Nonetheless, the screenshots are about the clash between conservatives and reformists over the performance of [REDACTED], not the petitioner.

Regarding item 26, the petitioner failed to include the date of the screenshot. Similar to item 24, the screenshot is about reformist lawmakers in Iran challenging the authority of [REDACTED] and is not primarily about the petitioner.

We note, regarding items A and B, that the items were published after the filing of the petition on June 18, 2010. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. We also note that both items are identical with one posted online and the other one printed in *The New York Times*. Finally, we note that a review of the article reflects that it is not about the petitioner but various Iranian exiles and their activism.

As evidenced above, the petitioner submitted numerous articles and screenshots that briefly mention the petitioner's name or quote the petitioner. However, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the petitioner relating to his work, the submission of documentary evidence that quotes the petitioner or merely mentions the petitioner fails to meet the plain language of the regulation requiring published material about the petitioner relating to his work. The evidence also fails to establish the petitioner's eligibility as there is no evidence to demonstrate that the above referenced materials were published in professional or major trade publications or other major media and other deficiencies like failure to provide the author or date of the material.

Accordingly, the petitioner failed to establish that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

At the time of the filing of the petition, counsel claimed:

[The petitioner] was a member of the panels to confirm students' thesis in different Universities. The only evidence available to support this is copies of the thesis approved by [the petitioner]. Unfortunately due to the distance and lack of personal connection with former students we cannot offer you the evidence in this category.

In response to the director's request for additional evidence, counsel claimed:

There is no additional evidence available at this time. [The petitioner] served in a panel to qualify student's thesis in Iran. [The petitioner] served in that capacity for about 15 students graduating in [the] field of telecommunications and Electronics.

The director found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel failed to contest the decision of the director or offer additional arguments. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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. As counsel failed to address the director’s finding regarding this criterion, we will not further discuss it on appeal.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

At the time of the original filing of the petition and in response to the director’s request for evidence, the petitioner failed to claim eligibility for this criterion. However, in the director’s decision, he considered the petitioner’s submission of recommendation letters and found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues that the recommendation letters demonstrate the petitioner’s eligibility for this criterion and submitted two additional recommendation letters.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of “original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.”

We cite representative examples of the recommendation letters here:

2003, stated:

[The petitioner] was the deputy chairman of the Telecommunication Subcommittee, and in that capacity, he introduced and promulgated important bills that have a remarkable and long lasting influence for the betterment of the fellow citizens. Amongst them and related to my practice, I can name: Political Crime Statutes, Media Regulation Statutes, Civil Rights Statutes, and Provincial Election Statues.

[The petitioner's] liberating approach [sic] said legislations created hope in our community of civil rights advocates.

stated that the petitioner "introduced and promulgated important bills." However, failed to indicate if the bills were ever enacted into law and failed to specifically identify how the bills have had "a remarkable and long lasting influence" so to establish that they have been of major significance to the field. Simply performing one's job is not evidence of an original contribution. As a legislator, the petitioner would be expected to propose and assist in the passage of legislation.

stated:

Among [the petitioner's] most important activities was his leadership on a parliamentary committee responsible for inspecting Iran's prison system. [The petitioner] spearheaded efforts to identify and locate Iran's secret prisons, and pressured the government to shut down several of its most notorious detention facilities. [The petitioner's] actions resulted in the release of numerous students and other members of civil society who had been arbitrarily arrested and detained by Iran's security and intelligence apparatus.

Similarly, while credited the petitioner with shutting down detention facilities that resulted in the release of students, failed to indicate how this impacted the field as a whole and not limited to the individuals who were "arbitrarily arrested and detained."

stated:

[The petitioner] is an exceptional individual with vast knowledge of Iranian politics, democratic governance, and the role of non-governmental organizations. [The petitioner] is an activist who supports the establishment of a democratic system in Iran based on international standards of human rights. [The petitioner] was a member of Iran's Parliament while also being an active member of progressive political groups. As the director of , I honor his works and track record in Iran. [The petitioner's] legislative work were [sic] ground breaking and milestone in struggle for justice in Iran.

While described the petitioner's work as "ground breaking and milestone in struggle for justice in Iran," he failed to explain how the petitioner's work was groundbreaking. Not only does the letter from fail to indicate any original contributions made by the petitioner, the letter also fails to indicate if the petitioner's work has been majorly significant to the field as a whole and not limited to Iranian politics.

stated:

[The petitioner] emerged as a man of unfailing and lofty moral values, a politician unwilling to be tempted by the perks and privileges of power, if the price is infamy or forfeiting his democratic values. It is far from hyperbole to suggest that amongst his reformist peers, and for a young generation of Iranians, [the petitioner] embodied a young profile in courage, someone willing to stand up for democratic rights and values and readily pay the high cost clerical despots will force on those who dare stand up to them.

Although [redacted] praised the petitioner for his morals and values, [redacted] failed to state a single contribution of major significance to the field made by the petitioner.

[redacted] stated:

[The petitioner's] contributions were valuable not only for Iran, but were also being watched closely by other Muslim countries striving for their own democratic space. His pursuit of social change through the legislative framework became an important case study for many political scientists studying politics of the Middle East.

[The petitioner's] dedication to human rights continued after his term in parliament came to an end in 2004. [The petitioner] remained active in different non-governmental organizations defending human rights and women's rights in Iran. [The petitioner] also continued his fight against Internet censorship and proved to be one of Iran's most outspoken advocates of freedom of information.

[redacted] briefly indicated that the petitioner's "legislative framework became an important case study." However, [redacted] failed to explain how or why the petitioner's work was an important case study. We are not persuaded that the petitioner's work was studied by political scientists also demonstrates that it is of major significance to the field without specific examples reflecting the influence of the petitioner's work. Likewise, while [redacted] claimed that the petitioner continues to fight against Internet censorship, there was no evidence cited in the letter that reflects any significant results from his advocacy.

[redacted] stated:

[The petitioner] proved himself as an indefatigable defender of human rights in Iran. As head of inspecting and supervising of prisons he visited various prisons and produced a very critical report that documented numerous human rights violations in Iranian jails. I recall how he bravely criticized the Iranian Supreme Leader in a parliamentary speech after the latter had vetoed progressive press law. . . . I am very confident he will contribute greatly to our country and has my full support and endorsement.

In [redacted] letter, he briefly mentioned the petitioner's producing a report on human rights violations in Iranian jails, but failed to further describe the influence or impact of this report so as to

establish that it was of major significance to the field. Similarly, while the petitioner openly criticized the [REDACTED] failed to describe the significance of this criticism to the field as a whole. Finally, [REDACTED] stated that the petitioner “will contribute greatly (emphasis added). Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner’s work is likely to be influential is not adequate to establish that his work is already recognized as major contributions in the field. While [REDACTED] praises the petitioner, it appears from [REDACTED] statement that any measurable impact that results from the petitioner’s work will likely occur in the future.

[REDACTED] stated:

In my opinion, [the petitioner] is a prominent figure in area of human rights, civil and political rights, and reform in totalitarian governments. I believe [the petitioner] will be a great advantage for institutions and individuals active in the said area in the United States. In another point, [the petitioner] can produce freely and influence more audience in this country to the benefit of Iranian and American citizens.

While [REDACTED] states that the petitioner “is a prominent figure,” the letter fails to describe any original contributions of major significance to the field. Moreover, [REDACTED] indicated that the petitioner “will be a great advantage for institutions and individuals (emphasis added)” without identifying any current influence of the petitioner’s work on institutions or individuals. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

[REDACTED] stated:

[The petitioner’s] efforts in betterment of the conditions in prisons and other detention facilities were hugely successfully, especially when it comes to political prisoners. [The petitioner] was so instrumental in closing some of the most notorious detention centers in Iran: the Tohid Prison. In June 2003 when hundreds of students were detained for long durations, [the petitioner] and other members of the parliament including myself complained and took refuge in parliament as a form of protest. As the result of our effort, a special commission to release those students without trial was established. This was an [sic] great achievement and it could have been done without the untiring work of my friend [the petitioner].”

█ briefly described the petitioner's involvement in the closing of some detention facilities in Iran. However, █ failed to explain how the petitioner's work has been of major significance to the field as a whole and not limited to certain detention centers in Iran.

█ stated:

[The petitioner's] accomplishments are not veiled for any one of the following Iran's affairs. [The petitioner] was a student leader, member of the Parliament, and member of nonprofit organizations promoting civil societies. We had professional encounters while he was at his official post, but we expanded our cooperation after his term. As [the petitioner] was active in promulgating laws in protection of individual rights he was an advocate in strengthening the role of non-governmental organizations in society.

Similar to █ letter, █ failed to indicate any original contributions made by the petitioner and failed to indicate if the petitioner's work has been of major significance to the field as a whole and not simply limited to Iranian politics. In addition, while █ indicated that the petitioner was active in promulgating laws and advocating the role of non-governmental organizations, █ failed to indicate the results of the petitioner's involvement so as to establish original contribution of major significance in the field.

█ stated:

[The petitioner] is one of the leading Iranian experts on how to use information technologies to assist in democratization and human rights efforts in countries such as Iran. I have known of [the petitioner] by reputation since his time as a reformist congressman, and had the opportunity to meet him in 2009 prior to beginning my current assignment. [The petitioner] was also well and favorably known by my predecessors here at █ prior to my arrival. Both before and after leaving Iran [the petitioner] has been a tireless advocate for democratic reform in Iran, and his efforts have increased since arriving in the U.S. Since his arrival [the petitioner] has been a source of considerable help and insight to U.S. policymakers considering the current situation in Iran and what optimal U.S. policy should be.

While █ indicated that the petitioner "has been a source of considerable help and insight to U.S. policymakers," █ failed to describe the help or insight that the petitioner gave to U.S. policymakers so as to establish original contributions of major significance to the field. This criterion specifically requires that the petitioner establish original contributions of major significance to the field; the petitioner's reputation alone will not suffice for this criterion.

█ stated:

[The petitioner's] accomplishments and impacts on Iran's politics is [sic] very well recognized by Iranians and those who have interests in Iranian politics. [The petitioner] is among the handful of experts in the field of Information Technologies and democracy building, political reform and human rights. [The petitioner's] a political leader; student movement of Iran never had a more successful and effective leader than [the petitioner]. [The petitioner] led the student movement to a political victory during the reform era, and then represented the student movement at the Parliament (*Majilis*). [The petitioner] was among the most respected and accomplished Members of the Parliament who fought every day for his constituents. [The petitioner] continued his activities and played a major role in the women rights movement in Iran, that struggle is still alive. Since [the petitioner] is in the United States, [the petitioner] played a major role in educating the policy makers and experts about the political situation in Iran. [The petitioner] attended workgroups and conferences, and [the petitioner] met with politicians to form policies and alliances to support the democracy movement of Iran. His attempts were fruitful by influencing policy makers in supporting the freedom of Internet and communications in Iran.

While [redacted] described some of the political causes taken on by the petitioner, [redacted] failed to indicate how the petitioner's participation in the causes was an original contribution of major significance to the field. We note that [redacted] also indicated that the petitioner "played a major role in the women rights movement in Iran, but then indicated that the "struggle is still alive," which appears to reflect that the petitioner's contributions to the women rights movement failed to accomplish any significant results that would establish eligibility for this criterion. Moreover, while [redacted] stated that the petitioner attempted to influence policymakers regarding the Internet, [redacted] failed to provide any specific examples that reflected any significant results of his work.

[redacted] stated:

[The petitioner's] expertise and advocacy were among the factors that led to the U.S. government's decision, in March 2010, to exempt internet providers that provide services to Iranians from some of the restrictions on trade with Iran. [The petitioner] and others have consistently argued that ensuring that Iranian citizens have access to open communications is vital to the efforts of democracy and human rights advocates in Iran, and to combat the Iranian authorities' attempts to stifle dissenting voices in the cyberspace.

[redacted] cites to the petitioner's argument of open communication to the efforts of democracy and human rights. Although [redacted] indicated that Internet providers were exempted from some of the trade restrictions with Iran, [redacted] failed to indicate that the petitioner's argument or trade exemption has, for instance, led to a reduction of human rights violations in Iran so as to establish his original contributions of major significance to the field.

In this case, while the recommendation letters praise the petitioner and briefly describe his work, they fail to indicate that he has made original contributions of major significance to the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. While those familiar with the petitioner's work generally describe it as "important," "valuable," and "groundbreaking," the letters contain general statements that lack specific details to demonstrate that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁴ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Without additional, specific evidence showing that the petitioner's work has been original, unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner failed to establish that he 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.

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility based on the following submitted documentation:

1. An article entitled, "No to Iran on the Human Rights Council!" April 23, 2010, www.dailystar.com; and
2. A DVD that contained the following:

⁴ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

- A. “Speech – Rally in Front of UN 2009”;
- B. “[The petitioner’s] interview 2009”;
- C. “Iran Green Movement – 2009”;
- D. “Important speech in Parliament – 2003”;
- E. “Political experience, interview”;
- F. “Transition to democracy in Iran”; and
- G. “Voice of America, 10th Presidential Election 2009.”

We note here that counsel indicated in his cover letter that the petitioner was also eligible for this criterion based on the “[h]istory of the implementation of the Internet in Iran, its difficulties, and rules 2006.” However, counsel failed to specify the documentary evidence which relates to this claim and we find that the record of proceeding contains no relevant documentary evidence supporting this claim. We further note that counsel also indicated in his cover letter that the petitioner was eligible for this criterion based on the “[s]tatus of information and communication technology in Iran, and its difficulties. 2001 – 2004. Presented at WSIS Conference, TUNIS, 2005.” Although counsel refers to this claim in footnote number 66 as “exhibit G-1,” a review of the record of proceeding for Exhibit G-1 is a single piece of paper merely entitled “Exhibit G-1” that contains no supporting documentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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 failed to address this criterion in response to the director’s request for additional evidence. In the director’s decision, he found that “[t]he record is not supported by any evidence that the petitioner has authored any scholarly articles in the field.” On appeal, counsel reiterated the claims made at the time of the filing of the petition.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of *scholarly articles* in the field, *in professional or major trade publications or other major media* [emphasis added].” Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, regarding item 1, the petitioner’s article does not contain the characteristics of a scholarly article and appears to be a political opinion or commentary article rather than a scholarly article. As there is no evidence demonstrating, for instance, that the petitioner’s article was peer-reviewed, contained any references to sources, or was otherwise considered “scholarly,” the petitioner’s authorship of an article is insufficient to meet this

criterion. Furthermore, the petitioner failed to establish that www.dailystar.com is a professional or major trade publication or other major media.

Regarding item 2, the plain language of the regulation requires that the petitioner author scholarly articles in professional or major trade publications or other major media. The submission of a DVD that contains interviews, speeches, and televised media coverage of the petitioner does not meet the plain language of the regulation. There is no evidence establishing that the contents of the DVD contain the characteristics of a scholarly article, and that they were published in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on the following:

1. Member of the Sixth Parliament of Iran;
2. Deputy Chairman of Telecommunication Committee;
3. Member of Industries Committee, Sixth Parliament;
4. Member of Central Committee, the Office of Strengthening Unity ([REDACTED]);
5. Election Committee Chairman of the Defender of Human Rights Center (DHRC);
6. Founder and President of Iran Radio Communications Association (IRCA); and
7. Founder and President of Alumni Organization of Iran.

We note that counsel did not provide any specific statement or argument regarding any of these claims but simply listed the above items in his letter in support of the petition. However, regarding items 1 – 4, counsel referred to the documentary evidence previously discussed under the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Regarding item 5, counsel referred to the documentary evidence discussed under the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v). Regarding item 6, in counsel's footnote in his cover letter, he refers to www.ccwmagazine.com and www.itna.ir. However, the record of proceeding fails to reflect that counsel submitted screenshots of either of the websites.

In response to the director's request for additional evidence, regarding item 2, counsel submitted the previously discussed uncertified translation of a document reflecting the Internal Proceeding Rules for the ICA. We note that counsel failed to submit the original document to which the translation pertains. Regarding item 5, counsel submitted a document regarding the background of the DHRC. We note that counsel failed to identify the source of the document. In addition, counsel submitted a screenshot from www.humanrights-ir.org regarding DHRC. We note regarding 6, counsel again refers to www.ccwmagazine.com and www.itna.ir without submitting the screenshots for the websites. Counsel also failed to address any of the other items.

In the director's decision, he found that the petitioner failed to establish that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, counsel refers to the petitioner's previously submitted recommendation letters as evidence of the petitioner's eligibility for this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. Based on the submitted documentary evidence listed above, we are not persuaded that the petitioner has performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

While a review of the record of proceeding reflects that the petitioner was a member of the Sixth Parliament in Iran and served on some committees, the record falls far short in establishing that his membership or position on committees also demonstrates that he performed in a leading or critical role. Although the recommendation letters refer to the petitioner's involvement in introducing legislation, the petitioner failed to submit sufficient documentary evidence distinguishing him from the other members of parliament such as the Chairman of the Telecommunication Committee or even an individual who is in charge of the entire parliament. We cannot ignore that the uncertified translation of the Internal Proceeding Rules for the ICA suggests that there are several commissions and committees within the Iranian Parliament. Merely submitting documentation reflecting that the petitioner served in parliament or on committees is insufficient without documentary evidence establishing that the petitioner performed in a leading or critical role. Likewise, regarding [REDACTED] the documentary evidence reflects that the petitioner was a member of the committee and not evidence that he performed in a leading or critical role.

Even the recommendation letters fail to reflect that the petitioner performed in a leading or critical role. For example, [REDACTED] stated:

[The petitioner] was my colleague on the Committee for defending Free Elections in Iran, a committee under my main organization, [DHRC]. In that capacity, [the petitioner] attended meetings and conferences domestically and internationally. [The petitioner] and I participated in the International Telecommunication

Union's World Summit on the Information Society (WSIS) conference in Tunisia in 2005. [The petitioner] was a very active attendee and provided significant contributions to the conference.

We are not persuaded that attending meetings and conferences are reflective of a leading or critical role for an organization or establishment. [REDACTED] failed to demonstrate the responsibilities and accomplishments of the petitioner during the meetings so as to establish that he performed in a leading or critical role.

Moreover, [REDACTED] stated:

[The petitioner] was an official in the forefront of the movement for reform of government of Iran. [The petitioner] stayed committed to his causes and continued defending human rights in different roles and capacities, to name one; he joined [REDACTED] at [DHRC]. In that capacity he was active in researching and producing materials in regard to fair and open election.

Again, we are not persuaded that researching and producing materials is evidence of the petitioner's leading or critical role for DHRC.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the petitioner's leading or critical role be "for organizations or establishments that have a distinguished reputation." Although the director addressed the distinguished reputation element in his decision, counsel only addressed the petitioner's roles on appeal and failed to address the distinguished reputation requirement. The petitioner failed to submit any documentary evidence regarding the Telecommunication Committee, Industries Committee, Daftare Tahkime Vahdat, IRCA, and the Alumni Organization of Iran, and the petitioner failed to submit sufficient documentary evidence regarding DHRC and the Sixth Parliament of Iran so as to establish the distinguished reputations of these organizations or establishments.

Accordingly, the petitioner failed to establish that he meets this criterion.

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 1115. The petitioner failed to establish eligibility for any of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the

documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner garnered some attention regarding his political and humanitarian work in Iran. Specifically, the petitioner was involved in the campaign for freedom of communication regarding the Internet, women's rights, and exposing the illegal detention of students. However, the petitioner's work falls far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), 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).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's nationally or internationally recognized prizes or awards must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(i), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Although the petitioner failed to establish eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(i), we again note that the (HH) Grant Program was based on the petitioner's expressing his opinion regarding his government and financial need and not excellence in the field. Moreover, the petitioner failed to establish that the HH Grant Program is in the petitioner's field of technology and government. In addition, the purported awards from SIAUAT and CCISU appear to have been awarded by students. Such awards do not reflect that "small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Instead of earning awards from national or international experts in the field, the petitioner purportedly received awards that were issued by students. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁵ Likewise, it does not follow that a technology and government expert like the

⁵ While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*,

petitioner who received awards given by students should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

Furthermore, while the petitioner failed to establish eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner claimed eligibility based on his popular vote election to the Sixth Parliament and not based on outstanding achievements of its members that would demonstrate national or international acclaim. Likewise, the petitioner also claimed eligibility based on his membership with [REDACTED] a student organization.

The petitioner also failed to establish eligibility for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), based in part on the fact that the articles briefly mentioned or quoted the petitioner. The petitioner failed to submit published material about him regarding his work that would be expected from an individual who is recognized as one who has risen to the very top of his field of endeavor.

While the petitioner failed to establish eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner relied almost exclusively on recommendation letters. Such letters cannot form the cornerstone of a successful extraordinary ability claim. Further, 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. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence.

Finally, we cannot ignore that the statute requires the petitioner to submit “extensive documentation” of the petitioner’s sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section

No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

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

203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). In this case, the record of proceeding reflects numerous non-certified English language translations, partial translations, summary translations, and foreign language documents without any English language translations. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the title, date, and author of the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In addition, counsel claimed the petitioner’s eligibility for the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi) based on a DVD of speeches and interviews when the regulation clearly requires the authorship in professional or major trade publications or other major media. Moreover, counsel claimed the petitioner’s eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) without submitting any supporting documentation. Similarly, counsel claimed the petitioner’s eligibility for the leading or critical role criterion, in part, based on the petitioner’s role with IRCA and the Alumni Organization of Iran, but failed to submit any documentary evidence to support the claims. Likewise, counsel referred to an “Award” from the Sixth Parliament and two awards from SIAUAT and CCISU but failed to submit evidence of these awards. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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. We are not persuaded that an individual with sustained national or international acclaim could not submit primary evidence of his accomplishments, and the numerous deficiencies and poorly prepared documentation equate to “extensive documentation.”

The petitioner failed to submit evidence demonstrating that he “is one of that small percentage who have risen to the very top of the field.” In addition, the petitioner has not demonstrated his “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. Even when compared to those who submitted letters on the petitioner’s behalf, the petitioner’s accomplishments do not appear to be on par with those at the very top of the field. For instance, [REDACTED] in 2005 was named by [REDACTED] as one of the world’s 100 most influential people and has written more than 20 books and articles; [REDACTED] has won several international human rights awards; [REDACTED] regularly contributes to the New York Times, the Washington Post, the Economist and the International Herald Tribune. The petitioner falls far short of having reached such recognition and sustained acclaim. 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.

VII. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.