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



U.S. Citizenship
and Immigration
Services

B2

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: DEC 20 2010

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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,

UBeadndk
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on May 16, 2009, 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. Standard of Proof

In addition, counsel argues:

We respectfully submit that the Director has applied an incorrect standard of proof to the adjudication of this petition and, therefore, has subjected the petitioner to a higher standard of eligibility than required by applicable law. In the Notice of Intent to Deny (NOID), the Director stated that “the evidence must **clearly** demonstrate that the [petitioner] has sustained national or international acclaim and that the [petitioner’s] achievements have been recognized as extraordinary by others in the field.” (emphasis added; page 2 of the Notice of Intent to Deny, March 3, 2009). The appropriate standard of proof to be met for immigrant visa petitions is “preponderance of the evidence,” not the more restrictive standard of clear and convincing evidence.” According to Black’s Law Dictionary (7th ed.), the clear and convincing standard is defined as “evidence indicating that the thing to be proved is highly probable or reasonably certain,” which is a heavier burden than the “preponderance of the evidence” standard that applies here.

We bring the Service’s attention to the USCIS Adopted Decision in *Matter of Chawathe*, outlining the standard of proof to be met by the petitioner. The Adopted Decision confirms that the correct burden of proof by petitioners seeking

immigration benefits is “preponderance of the evidence” and not any other standard

....

We first note that *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) was initially decided on January 11, 2006, and designated as an “adopted decision” of USCIS, guiding USCIS officers in their administration of the immigration laws. It was not designated as precedent under the regulation at 8 C.F.R. § 1003.1(i) until October 20, 2010. In accordance with *Matter of Chawathe*, in most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought.

We further note that counsel’s argument is based on the director’s notice of intent to deny and not on the director’s denial of the petition. A notice of intent to deny is not the final decision of the director, but a proposed denial to afford the petitioner the opportunity to respond to any derogatory information and/or submit additional documentary evidence. 8 C.F.R. § 103.2(b)(8)(iii). In addition, counsel argues that the director required “the more restrictive standard of ‘clear and convincing evidence.’” A review of the director’s notice of intent to deny reflects that the director stated that “[t]he evidence must clearly demonstrate that the [petitioner] has sustained national or international acclaim” The director did not state or require the higher standard of “clear and convincing.” We are not persuaded that the director’s use of “clearly” equates to “clear and convincing.”

While we agree with counsel that the proper standard of proof in adjudicating the petitioner’s extraordinary ability petition is the preponderance of evidence, we are not persuaded that the director’s statement in the notice of intent to deny required a higher burden of proof contrary to *Matter of Chawathe*. In the director’s notice of intent to deny, the director’s statement referred to how he would consider the evidence, not the “standard of proof” being applied. In determining whether an alien has met the preponderance burden, the officer has the discretion to review any evidence he finds credible and relevant. Under *Chawathe*, the truth is to be determined not by the quantify of evidence alone but by its quality. *Id. at 376*. Additionally, the “preponderance of the evidence” standard does not relieve the petitioner from submitting specific objective evidence as required under the regulation at 8 C.F.R. § 204.5(h)(3). For these reasons, we are not persuaded by counsel’s argument that the director erred in his decision regarding this matter.

II. Specific Reasons in the Notice of Intent to Deny

Counsel also argues:

Counsel submits that the Director simply did not follow the applicable regulations. The Director provided no meaningful information whatsoever in his NOID. He simply stated that “[t]his office is unable to complete the processing of your petition without further information” and then merely listed the ten regulatory criteria. He failed to specify why the evidence previously submitted was not satisfactory. He did not explain the type of additional evidence required, or the bases for the proposed

denial sufficient to give petitioner adequate notice and sufficient information to respond.

Even if the director had committed a procedural error in the NOID, it is not clear what remedy would be appropriate beyond the appeal process itself. The director's denial specifically discussed the petitioner's eligibility as it pertained to the claimed criteria. Counsel has had an opportunity to present further arguments and evidence on appeal. Therefore, it would serve no useful purpose to remand the case based on a deficient NOID when the director adequately discussed the petitioner's ineligibility in the denial. Nevertheless, on appeal, we will evaluate all of the petitioner's evidence as it relates to the petitioner's eligibility for the claimed criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). 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 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).

III. 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 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).

IV. Translations

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted numerous non-certified English language translations and partial translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

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).

(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.

At the time of the original filing of the petition and in response to the director's notice of intent to deny the petition, the petitioner submitted a single certification that purportedly related to numerous translations. It is unclear which document or documents, if any, to which the certification pertains. The submission of a single translation certification for multiple documents 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." However, the petitioner submitted numerous partial translations for the majority of his foreign language documents. 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.

V. Primary Evidence

While also 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 of 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, newspaper and magazine articles, and photographs of ribbons, 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.

VI. Analysis

A. One-Time Achievement

At the time of the original filing of the petition and in response to the director's notice of intent to deny the petition, the petitioner failed to claim eligibility based on a one-time achievement. However, on appeal, counsel argues:

The Director improperly evaluated the evidence and erred in concluding that the petitioner did not have a major internationally recognized award, even though he won a competition resulting in his art appearing on the very first Latin American conservation stamp.

* * *

In 1992, [the petitioner's] original artwork was selected for the first wildlife stamp in Latin America. [The petitioner] won the Best in Show Prize from the National Wildlife Galleries in the United States, in a competition to select the art that appeared on the very first Latin American conservation stamp and a print. The competition was internationally sponsored by The National Foundation of Wild Life (Costa Rica), the Ministry of Environment and Energy (Costa Rica), and the National Wildlife Corporation (United States of America). As a result of winning, [the petitioner's] work was featured on Costa Rica's [redacted] in 1992 – 1993.

The Director did not give proper consideration to this single important international award, which satisfies the "one-time achievement" criterion.

The director could not have erred as counsel only claimed the petitioner's eligibility regarding the one-time achievement for the first time on appeal. If it was counsel's contention that the petitioner met the one-time achievement at the time of the filing of the petition or in response to the director's notice of intent to deny the petition, counsel never provided such a statement or argument in that regard. The burden is on the petitioner to establish eligibility. It is not the director's responsibility to infer or second-guess the intended eligibility.

As counsel is now claiming on appeal the petitioner's eligibility for the one-time achievement, we will review the petitioner's documentary evidence to determine if it is sufficient to meet the one-time achievement requirement. On appeal, counsel claims the petitioner's eligibility for the one-time achievement based on the following documentation:

1. A document entitled, [REDACTED] reflecting that the petitioner's "artwork for the [1992 – 1993 [REDACTED] important first stamp and print was chosen in a national competition";
2. Screenshots from www.nationalwildlife.com reflecting that the petitioner was credited artist for the 1992 [REDACTED] and
3. An article entitled, [REDACTED] July 20, 2001, [REDACTED] www.nacion.com reflecting "[i]t was the first Latin-American Prize for the Reproduction in Lithographies and Philatelic Seals for Conservation, sponsored by the National Foundation of Wildlife of Costa Rica, and the National Wildlife Corporation of U.S."

Regarding item 3, we note that in counsel's brief, she claimed that Exhibit B on appeal reflected "multiple articles describing the award." However, a review of Exhibit B only reflected one article that mentioned the award. We further note that some of the articles only contained partial translations and without full English language translations we cannot determine if the articles discussed the award. 8 C.F.R. § 103.2(b)(3).

Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires that "[s]uch evidence shall include evidence of a one-time achievement (that is, a *major, international recognized* award) (emphasis added)." While the petitioner submitted sufficient documentation establishing that his artwork was selected for the [REDACTED] the petitioner failed to establish that this demonstrates a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize,

the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize.

While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. However, the documentation submitted by petitioner fails to establish that the selection for the [REDACTED] constitutes a major, internationally recognized award. For example, while the petitioner won the competition in 1992, the petitioner submitted a single article that briefly mentioned the award in 2001, approximately nine years after the petitioner won the competition. The lack of media attention and timeliness of the minute media coverage are not reflective of a major, internationally recognized award. Moreover, the documentary evidence reflects that the First of Latin America Costa Rica Conservation Stamp and Print was restricted to a national competition and is not demonstrative of an internationally recognized award. Finally, the documentary evidence reflects that the competition "was the first Latin-American Prize for the Reproduction in Lithographies and Philatelic Seals for Conservation." Given the fact that this was the first time this competition was conducted, the petitioner failed to show that any subsequent awards have been well-established in the field so as to demonstrate its major, international recognition. The mere submission of documentary evidence that only demonstrates the petitioner's receipt of an award is insufficient to establish eligibility for the one-time achievement requirement without documentary evidence reflecting that the award is a major, internationally recognized award. For these reasons, we are not persuaded that the selection for the First of Nation Waterfowl Conservation Stamp constitutes a major, internationally recognized award. The award will be further addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

B. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 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.

The director found the documentary evidence submitted by the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

[The petitioner] has received numerous other national and international awards that he was received in recognition of his extraordinary contributions to the field

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

of art, specifically paintings of wildlife, with naturalist, conservation and ecological themes. We included numerous newspaper articles confirming his receipt of these awards, and provided photographs of [the petitioner] receiving the awards from dignitaries including the First Lady of Costa Rica, and corporate executives such as from Pfizer Corporation. . . . At this time, we are also providing photographs of award ribbons he has received more recently.

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. Screenshots from the petitioner's website, [REDACTED] reflecting approximately 21 awards;

2. A letter from [REDACTED] who stated:

[The petitioner] is a very important artist in our country, with his hard work he tries to maintain the natural balance of our environment, making him the pioneer of this movement, winning important awards from the Costa Rican Art Museum, National Museum of Costa Rica, Historical Museum Juan Santamaria, Ministry of Nature and Energy and Museum of Jade from the National Institute of Insurances.

Beyond our borders, he received a recognition for the cooperation in the Ecology Congress and Conservation of the Environment with his exhibition in the [REDACTED] Museum, Jalisco, Mexico, 1998.

3. A copy of a photograph with a caption reflecting "1980 1st Grand Prize – Competition of Costa Rican endangered species art from 40 competing pieces from various national artists";

4. A copy of a photograph with a caption reflecting "1992 Pfizer Corporation Watercooler competition Costa Rica Union Club. One of Three Honorable Mention Awards";

5. Copies of three photographs with a caption reflecting "2005, March. Juried Contest Exhibition of 400 participating artists: Fair [illegible] Art Council, Mobile, Alabama, USA. Winner, People's Choice award";

6. A partial translation of an article entitled, [REDACTED] November 24, 1986, unidentified author, *La Prensa Libre*, reflecting "[t]he painter [the petitioner] (right) winner of the first award of the contest 'Endangered animals of Costa Rica'";

7. A partial translation of an article entitled, [REDACTED] September 13, 1983, unidentified author, [REDACTED] reflecting “[the petitioner] has won many awards from contests organized by the Costa Rican Art Museum and other cultural organizations”;
8. A partial translation of an article entitled, [REDACTED] November 17, 1992, unidentified author, [REDACTED] reflecting “[a]fter a national contest in which participated 54 painters, the Foundation chose the sample of [the petitioner] as the most true to form representation of the ‘Piche careto’”;
9. An article entitled, [REDACTED] November 10, 2005, [REDACTED] reflecting that “[the petitioner] has received a prize in the Annual Jurist Contest of Alabama and a mention of honor in the Festival of the Arts 2005 in Oregon”;
10. An article entitled, [REDACTED] November 2004, [REDACTED] *Revista Costa Rica*, that listed approximately 17 awards;
11. A letter addressed to the petitioner from [REDACTED] who stated that the petitioner’s artwork was “chosen to be a finalist in The Municipal Art League of Chicago [MALC]-Midwest Fine Art Competition”;
12. A copy of a photograph of a document reflecting an honorable mention from the MALC 2008 Biennial Midwest Fine Art Competition.
13. A certificate for 2008 Best of Show at the Lincolnshire Art Festival;
14. A letter from [REDACTED] who stated that “[the petitioner] won an award for Best of Painting in the Cantigny Art Festival, Best of Painting in the Joliet Art Festival and Best of Show in the Lincolnshire Art Festival for the year 2008”; and
15. Photographs of various ribbons from the Joliet Fine Art Festival of the Masters, Joliet Fine Art Festival, Cantigny Fine Art Festival, and Lincolnshire Art Festival.

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.” In general, a review of the documentary evidence submitted by the petitioner fails to reflect that he submitted primary evidence of his awards or evidence that primary evidence does not exist pursuant to the regulation at 8 C.F.R. § 103.2(b)(2). Instead, as

evidenced above, the petitioner submitted photographs with captions claiming they represented his receipt of awards, photographs of ribbons, and articles, including partially translated articles. As such, the petitioner failed to demonstrate his “receipt” of prizes or awards. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the petitioner’s prizes or awards be “nationally or internationally recognized” and “for excellence.” It is the petitioner’s burden to establish every element of this criterion. Even if the petitioner submitted primary evidence of his awards, which he did not, merely submitting documentary evidence reflecting receipt of awards is insufficient to establish eligibility for this criterion without documentary evidence establishing that the awards were nationally or internationally recognized for excellence.

Regarding item 1, without independent, objective, and primary evidence we cannot accept the petitioner’s self-serving personal website as having any evidentiary weight in this proceeding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding item 2, the letter from [REDACTED] generally indicated that the petitioner won “awards from the Costa Rican Art Museum, National Museum of Costa Rica, Historical Museum Juan Santamaria, Ministry of Nature and Energy and Museum of Jade from the National Institute of Insurances” without naming or describing the awards. Again, the petitioner failed to submit primary evidence of the awards. Moreover, [REDACTED] failed to establish that the awards were “nationally or internationally recognized prizes or awards for excellence.”

Regarding items 3 – 5, the petitioner failed to submit primary evidence of the claimed awards. Moreover, a review of the photographs fails to reflect any awards or prizes. In fact, the photographs merely reflect the petitioner with other individuals and the only mention of awards is in the accompanying captions. We simply cannot accept self-serving captions claiming to reflect awards as credible, objective evidence. Regardless, the petitioner failed to submit any documentary evidence establishing that the awards in the captions are nationally or internationally recognized prizes or awards for excellence.

Regarding items 6 – 10, the petitioner also failed to submit primary evidence of the claimed awards. Instead, the petitioner submitted articles. Furthermore, regarding items 6 – 8, the petitioner submitted partial translations of the articles rather than full translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Even if we would accept these articles as evidence of the petitioner’s receipt of awards, which we do not, the articles merely state that the petitioner received awards without discussing the significance of the awards in order to demonstrate the national or international recognition for excellence. For example, as evidenced above in item 9, the article stated that “[the petitioner] has received a prize in the Annual Jurist Contest of Alabama and a mention of honor in the Festival of the Arts 2005 in Oregon.” The petitioner failed to submit any documentary evidence demonstrating that any prizes or awards from the

Annual Jurist Contest of Alabama or the Festival of the Arts 2005 in Oregon are nationally or internationally recognized prizes or awards for excellence.

Regarding items 11 – 15, the documentary evidence was submitted in response to the director's notice of intent to deny or on appeal. The petition was filed on May 7, 2008. However, a review of the documentary evidence refers to events occurring in 2008 and fails to reflect the specific dates, so as to demonstrate that they were received prior to the filing of the petition. 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 (Regl. 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. Nonetheless, the petitioner failed to submit any documentary evidence establishing that any of the awards are nationally or internationally recognized for excellence. We note, regarding item 12, that the petitioner failed to establish that an honorable mention equates to an award or prize for excellence.

Regarding the previously discussed selection of the petitioner's work for the [REDACTED] the petitioner failed to submit sufficient documentary evidence demonstrating that it is a nationally or internationally recognized prize or award for excellence. Again, while the petitioner submitted sufficient documentary evidence that his artwork was selected for the [REDACTED], merely submitting evidence of his receipt of any award or prize is insufficient to establish eligibility for this criterion without documentary evidence reflecting national or international recognition for excellence. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner to demonstrate his receipt of more than one award or prize. Therefore, even if we were to find that his selection for the [REDACTED] qualified under this criterion, which we do not, the petitioner would only have demonstrated the receipt of one award. As such, the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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.

A review of the record of proceeding reflects that the petitioner failed to claim eligibility for this criterion at the time of the original filing of the petition and in counsel's written response to the director's notice of intent to deny. Specifically, in response to the director's notice of intent to deny, counsel indicated that "[the petitioner] is not a member of any association in the field." However, in titling the petitioner's exhibits in the response to the notice of intent to deny, counsel indicated that the documentary evidence related to the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). In reviewing counsel's written response to the notice

of intent to deny, the documentary evidence was referred by counsel to the judging criterion pursuant to the regulation at 8 C.F.R. 204.5(h)(3)(iv).

While it appears that counsel mistakenly labeled the petitioner's documentary evidence, we further note that counsel submitted a certificate reflecting that the petitioner is a member of the Municipal Art League of Chicago (MALC). In counsel's written response to the director's notice of intent to deny, counsel did not refer to the MALC certificate or claim the MALC certificate under any of the other criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Further, the record contains no evidence regarding any membership requirements. Regardless, as counsel failed to contest the decision of the director, offer additional arguments, or claim the petitioner's eligibility for this criterion on appeal, we will not further discuss this criterion.

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.

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel claims:

[The petitioner's] work has been featured favorably on numerous occasions in national and international newspaper articles. We note that most of the articles submitted in support of this criterion are about the beneficiary and his art, and include his name in the title and often his photograph. Copies of the articles were included in the initial filing, and our response to the Notice of Intent to Deny and are included again here. . . . We note that all of the publications include the title, date, author, circulation figures and any necessary English translations.

Counsel respectfully takes issue with the Director's interpretation of the evidence not rising "to the level to satisfy the criterion." The plain language of the regulatory criterion simply asks for "evidence of the published material about the alien in professional or major trade publication or other major media, relating to the alien's work in the field for which classification is sought" and does not place any additional requirements on the petitioner other than supplying the title, date, author, and necessary translation. In other words, appearing in major media should satisfy this regulatory criterion, without having to demonstrate anything else.

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. An article entitled, [REDACTED] August 25, 2000, [REDACTED]
[REDACTED]
2. An article entitled, [REDACTED] October 30, 2001, [REDACTED] www.nacion.com;
3. An article entitled, [REDACTED] July 20, 2001, [REDACTED] www.nacion.com;
4. An article entitled, [REDACTED] November 11, 2003, [REDACTED] www.nacion.com;
5. An article entitled, [REDACTED] November 10, 2005, [REDACTED] www.nacion.com;
6. An article entitled, [REDACTED] June 24, 2007, [REDACTED] www.nacion.com;
7. An article entitled, [REDACTED] October 27, 2001, [REDACTED] www.nacion.com;
8. A partial translation of an article entitled, [REDACTED] October 5, 1989, unidentified author, *Tiempo*;
9. A partial translation of an unidentified title of an article, April 23, 1997, unidentified author, *El Informador*;
10. A partial translation of an article entitled, [REDACTED] November 24, 1986, unidentified author, [REDACTED]
[REDACTED]
11. A partial translation of an article entitled, [REDACTED] December 3, 1998, unidentified author, *Central America Weekly*;
12. A partial translation of an article entitled, [REDACTED] September 13, 1983, unidentified author, [REDACTED]
13. A partial translation of an article entitled, [REDACTED] May 6, 1998, unidentified author, [REDACTED]
14. A partial translation of an article entitled, [REDACTED] November 17, 1992, unidentified author, [REDACTED]

15. A partial translation of an article entitled, [REDACTED] [REDACTED] unidentified date, [REDACTED]
16. A partial article entitled, [REDACTED] December 2002, unidentified author, [REDACTED]
17. A partial translation of an article entitled, [REDACTED] August 9, 1992, [REDACTED]
18. A partial translation of an article entitled, [REDACTED] [REDACTED] May 6, 1998, [REDACTED]
19. A partial translation of an article entitled, [REDACTED] June 1, 1994, [REDACTED]
20. A partial translation of an article entitled, [REDACTED] [REDACTED] July 13, 1998, [REDACTED] *Ocho Columnas*;
21. A partial translation of an article entitled, [REDACTED] [REDACTED] June 14, 1999, [REDACTED]
22. A partial translation of an article entitled, [REDACTED] [REDACTED] June 27, 2008, [REDACTED] *Hoy Chicago*;
23. A snippet entitled, [REDACTED] October 25, 2007, unidentified author, *Northwest Herald*;
24. A snippet entitled, [REDACTED] January 20, 2008, unidentified author, www.reflejos.com;
25. A snippet entitled, [REDACTED] October 25, 2007, [REDACTED] *Northwest Herald*;
26. An article with an non-translated title, March 2001 [REDACTED] *Styles and Houses*;
27. An article entitled, [REDACTED] January 2000, [REDACTED] *Styles and Houses*;
28. An article entitled, [REDACTED] unidentified date, unidentified author, unidentified source;

29. An article entitled, [REDACTED] October 16, 2008, [REDACTED] unidentified source;
30. An article entitled, [REDACTED] October 25, 2007, [REDACTED] *Northwest Herald*;
31. An article entitled, [REDACTED] October 26, 2007, [REDACTED] www.hoyinternet.com;
32. An article entitled, [REDACTED] December 20, 2007, [REDACTED], www.pioneerlocal.com;
33. A blog entitled, [REDACTED] March 16, 2009, [REDACTED] www.plainfieldleague.blogspot.com;
34. An article entitled, [REDACTED] June 9, 1994, [REDACTED] *Prensa Libre*;
35. An article entitled, [REDACTED] October 4, 1989, [REDACTED];
36. An article entitled, [REDACTED] November 2004, [REDACTED];

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.” While counsel claims on appeal that “all of the publications include the title, date, author, circulation figures and any necessary English translations,” numerous articles submitted by the petitioner, in fact, failed to contain the title, date, and author of the material. Furthermore, the petitioner submitted several articles that contained only partial translations. While on appeal counsel submitted two articles (items 34 and 35) with full translations that were previously

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.

submitted with partial translations, counsel also submitted on appeal several documents with only partial translations.

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. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding items 1 – 6, a review of the Internet articles reflects material about the petitioner relating to his work. However, while the petitioner submitted documentary evidence regarding *La Nacion*, the petitioner failed to submit any documentary evidence demonstrating that www.nacion.com is a professional or major trade publication or other major media. Regarding item 7, the Internet article is not about the petitioner. Rather, the Internet article is about the Framework Jade Museum Fidel Tristan. Although the Internet article mentions the petitioner as inaugurating the art exhibition with his work, it remains that the article is not about the petitioner but primarily about the Framework Jade Museum Fidel Tristan.

Regarding items 8 – 22, the petitioner submitted partial translations of the articles. In fact, the majority of the translations contain only a couple of sentences. For example, the translation for item 11 merely reflects "[t]o this editing the rumor of his quality arrived, of his pictures, brilliantly created and therefore we went to verify and really is true, He is an artist with capital letter." Because the petitioner submitted partial translations, we cannot determine if the articles reflect published material about the petitioner relating to his work. Furthermore, the petitioner failed to include the title, date, and/or author of the material for items 8 – 17 as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). We note regarding item 22 that the article was published on June 27, 2008, after the filing of the petition. 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.

Regarding item 23 and 24, the petitioner failed to include the authors of the snippets. Furthermore, a review of items 23 - 25 fails to reflect published material about the petitioner relating to his work. In fact, the snippets merely reflect announcements of the petitioner's presence at the McHenry County College Shah Center. Moreover, the petitioner failed to submit any documentary evidence establishing that the *Northwest Herald* and www.reflejos.com are professional or major trade publications or other major media.

Regarding item 26, the petitioner failed to include the translated title of the article. While a review of the articles for items 26 and 27 reflects material about the petitioner relating to his work, we are not persuaded that a review of the [REDACTED] demonstrates a professional or major trade publication or other major media, based on the claim of "8,000 copies by edition."

Regarding item 28, the petitioner failed to include the date and author of the material. In addition, the petitioner failed to identify where the material was published so as to establish that it was published in a professional or major trade publication or other major media. Further, the article is not about the petitioner. Rather, the article is about animals in art, and the petitioner was only mentioned one time.

Regarding item 29, the petitioner failed to identify where the material was published so as to establish that it was published in a professional or major trade publication or other major media. Further, the article is not about the petitioner. In addition, the article was published on October 16, 2008, after the filing of the petition. 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.

Regarding item 30, the article is not about the petitioner. Instead, the article is primarily about local artists' artwork at the [REDACTED]. While the article mentions the petitioner's artwork twice, it remains that the article is not about the petitioner relating to his work. Again, the petitioner failed to submit any documentary evidence demonstrating that the *Northwest Herald* is a professional or major trade publication or other major media.

Regarding items 31 and 32, a review of the articles reflect material about the petitioner relating to his work. However, the petitioner failed to submit any documentary evidence demonstrating that www.hoyinternet.com and www.pioneerlocal.com are professional or major trade publications or other major media.

Regarding item 33, the blog was posted on March 16, 2009, after the filing of the petition. 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. Moreover, the petitioner failed to submit any documentary evidence establishing that www.plainfieldleague.blogspot.com is a professional or major trade publication or other major media.

Regarding item 34, a review of the article fails to reflect that it is about the petitioner relating to his work. Rather, the article is about the extinction of wildlife in Costa Rica. While the petitioner's artwork is mentioned in the artwork as being displayed at the Art Gallery of the National Bank of Costa Rica, it remains that the article is not primarily about the petitioner relating to his work. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that *La Prensa Libre* is a professional or major trade publication or other major media.

Regarding item 35, a review of the article reflects material about the petitioner relating to his work. The petitioner submitted a screenshot from www.multimedia.com reflecting that *La Republica* is a daily newspaper in Costa Rica with a circulation of 27,737. We are not persuaded that such circulation statistics is demonstrative of a professional or major trade publication or other major media.

Regarding item 36, a review of the article reflects material about the petitioner relating to his work. The petitioner submitted documentary evidence from www.fundacionamericana.com reflecting that *Revista Costa Rican* has a regular circulation of 5,000. We are not persuaded that such circulation statistics reflects a professional or major trade publication or other major media.

As evidenced above, the petitioner submitted some articles and screenshots that reflect material about the petitioner relating to his work. However, the petitioner failed to demonstrate that the material was published in professional or major trade publications or other major media as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, numerous documents were submitted without including the title, date, and author of the material, as well as full translations. The burden is on the petitioner to establish every element of this criterion. In this case, the petitioner failed to do so.

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.

The director found that the petitioner failed to establish eligibility for this criterion. Specifically, the director stated:

You state, “[The petitioner] is an expert Fine Artist/Painter . . . He has lectured, presented workshops and given demonstrations on the subject to prestigious organizations and events.” This statement does not indicate or imply that your [sic] participated, either individually or on a panel, as a judge of the work of others. The evidence does not satisfy this criterion.

On appeal, counsel claims:

[The petitioner] submitted evidence of his providing art instruction at a significant art school, Studio 56, dedicated to hyper-realism in Tibas, Costa Rica. In addition, evidence that he has lectured, presented workshops and given demonstrations on the subject to prestigious organizations and events was provided.

* * *

The plain language of the regulatory criterion of “judging the work of others” simply asks for “evidence that the foreign national has participated as the judge of the work of others” and does not place any additional requirements on the petitioner or beneficiary. The regulations, for instance, do not demand that the foreign national’s participation as the judge be the result of his extraordinary or outstanding abilities. In other words, participation as the judge of the work of others through peer-review, teaching, advising or similar activities should satisfy this criterion.

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. The previously mentioned article entitled, [REDACTED] [REDACTED] October 16, 2008, [REDACTED] unidentified source;
2. An advertisement entitled, [REDACTED] [REDACTED] at the [REDACTED] on October 18, 2008;
3. A letter from [REDACTED] who thanked the petitioner for “presenting” his program;
4. An e-mail from [REDACTED] at the Morton Arboretum, who stated that the petitioner “present[ed]” his work at the Nature Artists’ Guild in October 2008;
5. An e-mail from [REDACTED] [REDACTED] who requested confirmation of the petitioner’s presence at SCH on October 28, 2008;
6. An advertisement for the petitioner’s workshop at the LaGrange Art League from May 30 – 31, 2009; and
7. An article entitled, [REDACTED] October 4, 1989, [REDACTED] reflecting that the

petitioner “is regarded as an outstanding professor at Studio 56, in the Gallery of Art in Tibas and in his presentations at colleges in San Jose.”

At the outset, regarding items 1 – 6, the documentary evidence reflects events occurring after the filing of the petition. 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.

Further, 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 (emphasis added).” Pursuant to *Kazarian*, 596 F.3d at 1121-22, we agree with counsel that the regulation at 8 C.F.R. § 204.5(h)(3)(iv) does not require the petitioner’s “participation as the judge be the result of his extraordinary or outstanding abilities.” However, the documentary evidence submitted by the petitioner fails to reflect that he has ever served “as a judge of the work of others.” Regarding item 7, the article merely reflects that the petitioner taught at Studio 56 and made presentations at colleges in San Jose. Based on the article, the petitioner failed to establish that participating as a teacher or presenter equates to “a judge of the work of others.” The petitioner failed to submit sufficient documentary evidence that meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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.

The director found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

For over 30 years, [the petitioner] has taken innovative and important strides in the study and practice of painting hyper-realistic images with wildlife, naturalist and ecological themes. The fact that his work has garnered awards from top wildlife organizations like the National Foundation of Wild Life (Costa Rica), Ministry of Environment and Energy (Costa Rica), and the National Wildlife Corporation (United States of America), and from prestigious museums such as Costa Rican Museum of Art and the National Museum of Costa Rica, proves that the work is of major significance and original.

* * *

Besides government institutions, numerous Central American museums, including the National Gallery, Jade Museum, National Museum of Costa Rica, Historical Museum Juan Santamaria have also hosted solo exhibitions displaying [the petitioner's] artwork. These venues are not ordinary, rather they are the premiere venues in Costa Rica.

It is noted that the petitioner's awards and the exhibition of his work fall under separate criteria and are discussed in-depth under those criteria. We will not presume that evidence relating to or references in letters discussing these facts is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

The record of proceeding reflects that the petitioner submitted recommendation letters. We cite representative examples here:

[REDACTED] stated:

[The petitioner] is an artist who collaborated much with the Ministry [sic] of Environment in various ways for many years. He has realized through various exhibitions and gatherings of paintings of animals in danger of extinction, the distinction as the best representative of our country in this genre.

* * *

[The petitioner] has always been distinguished as a great collaborator with the Ministry of the Environment, and I have had the opportunity to closely know his great talent, as well as his personal fine behavior, which distinguishes him as a very kind person of enterprising [sic] character, always with superior project and ideas; and above all a person with good feelings and huge sensibilities for nature.

[REDACTED] stated:

[The petitioner] has been an invaluable contributor of the General Direction of wildlife in the execution of the rubber stamp and printing program, for the conservation of the aquatic birds in or [sic] country. Therefore [sic] this direction will be grateful of any attention that you want to serve [the petitioner] in the development of his profession.

[REDACTED] stated:

I wish to leave proof that [the petitioner] is thought of as a very well known local Costa Rican artist. [The petitioner] has more than twenty years of painting in a

very serious form. Although during all his career he has shown his interest for the Costa Rican landscape, he has more recently specialized, in landscapes and the animals that populate them, with meticulous work. To this cause, in the year 2000, as the curator of Museums of the Central Bank, I included one of his works in a sample exhibition carried out in that Museum that has as name "Animals."

We note here that the petitioner submitted several letters that were addressed to the petitioner regarding exhibitions of the petitioner's artwork from the following individuals:

1. [REDACTED] – National Museum of Costa Rica;
2. [REDACTED] – Museum of Sister Cities;
3. [REDACTED] – Guadalajara Zoo;
4. [REDACTED] – Arnulfo Miramontes Romo de Vivar;
5. Unsigned letter from the Guadalajara Country Club, A.C.;
6. [REDACTED] – Regional Museum of Tonalá; and
7. [REDACTED] – Guadalajara Zoo.

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 artistic-related "contributions of major significance in the field."

Regarding counsel's arguments on appeal regarding the petitioner's awards, they have already been considered under the regulation at 8 C.F.R. § 204.5(h)(3)(i). Furthermore, regarding counsel's arguments regarding the petitioner's exhibitions, as well as items 1 – 7, the regulation at 8 C.F.R. § 204.5(h)(3)(vii) provides a separate category for the display of the petitioner's work at artistic exhibitions and showcases that will be later discussed under that criterion. We will not presume that evidence relating to or even meeting the awards criterion or display criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Regarding the three remaining reference letters, they fail to describe original artistic contributions of major significance to the field. The regulation at 8 C.F.R. § 204.5(h)(3)(v) does not merely require an alien to make contributions to the field but requires those contributions to be significant. Specifically, while [REDACTED] indicated that the petitioner collaborated with the Ministry of Environment, he failed to explain how the collaboration has

been of major significance to the field as a whole and not limited to the Ministry of Environment. Moreover, [REDACTED] stated that the petitioner has been an “invaluable contributor.” However, [REDACTED] failed to explain the impact or influence of the rubber stamp or printing program so as to establish that they have been of major significance to the field as a whole. Finally, while [REDACTED] indicated that the petitioner “has shown his interest for the Costa Rican landscape,” she failed to explain how the petitioner’s interest in landscapes and animals also demonstrates an original contribution of major significance to the field.

In this case, there is no indication that the petitioner's work is both an original contribution and of major significance. As stated above, this regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not specifically identify contributions or how those contributions have 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 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.

We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. Without extensive documentation showing that the petitioner’s work has been unusually influential, widely accepted throughout his field, or has otherwise risen to the level of original 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 display of the alien’s work in the field at artistic exhibitions or showcases.

In the director’s decision, he found that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the

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.).

display of the alien's work in the field at artistic exhibitions or showcases." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Therefore, we agree with the decision of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

The director found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

In his Denial, the Director states that the Petitioner submitted letters from various organizations "inviting you to exhibit your work" in support of this criterion, which "does not indicate that [the Petitioner] performed in a leading or critical role for organizations or establishments that have a distinguished reputation." Counsel respectfully takes issue with the Director's analysis and conclusion, as documentation in support of this criterion did not only take the form of letters inviting the Petitioner to exhibit his work. Rather, documentation was also submitted in the form of letters attesting to [the petitioner's] talent and accomplishments, publicity releases and promotional materials about his exhibitions, and documentation of the distinguished reputations at which his work was exhibited.

* * *

The very nature of "solo exhibitions" indicates a starring role. Participation in a "collective exhibition" may also include leading or critical role. A collective exhibition usually has a theme as selected by a museum curator or organizer. One or many pieces from different artists are selected to represent the theme or motif at the collective exhibition. Thus, [the petitioner's] contribution to a collective exhibition is a critical element and means he played a leading or critical role in a collective exhibition.

In addition, on appeal, counsel listed various exhibitions and government institutions that showcased the petitioner's work and referred to the previously discussed recommendation letters and newspaper articles. We are not persuaded by counsel's arguments. We have already discussed the petitioner's eligibility as it pertained to the display of his work at artistic exhibitions and showcases pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). As previously indicated, it would negate the regulatory requirements if we were to presume that evidence relating to or even meeting the display criterion is presumptive evidence that the petitioner also meets 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. While the documentary evidence reflects that the petitioner exhibited his work, the petitioner failed to demonstrate that he has performed in a leading or critical role. The documentation submitted by the petitioner is simply reflective of the petitioner’s participation at numerous events. The petitioner failed to submit sufficient documentary evidence that is demonstrative of a leading or critical role. The record of proceeding is absent evidence that distinguished the petitioner from other numerous exhibitors who also displayed their work at the same museums or venues so as to establish that the petitioner performed in a leading or critical role.

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

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

The director concluded that the petitioner failed to establish eligibility for this criterion. Specifically, the director found:

You submitted evidence that in November of 2007 you made \$10,800 and then annualized it to \$129,600. You also submitted evidence that in April of 2008 you made \$24,975 and then annualized it to \$299,000. You clearly did not make \$129,600 in 2007 and you did not make \$299,000 in 2008. The evidence does not satisfy this criterion.

On appeal, counsel argues:

The Petitioner submitted documentation that his paintings sell for \$600 to \$100,000 for large murals and \$3,000 to \$200,000 for sculptures. As additional evidence, we included a list price from a bank in Costa Rica is currently selling one of [the petitioner’s] paintings titled [REDACTED] for \$12,000 USD. . . . This is an extraordinary sum even in light of the high figures commanded by other artists, a consequence of today’s market for highly sought-after art pieces. In addition, [the petitioner’s] award winning work sold as a stamp for up to \$750. The marketplace has clearly acknowledged his extraordinary abilities in the field, as well as his prominent stature among the very top Fine Artists/Painters employed in the industry.

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A check, dated April 17, 2008, addressed to the petitioner from [REDACTED] for \$4,000;
2. Two checks, dated March 22, 2008 and April 10, 2008, addressed to the petitioner from [REDACTED] for \$500 each;
3. Two checks, both dated January 31, 2008, addressed to the petitioner from [REDACTED] for \$5,000 each;
4. Two checks, both dated December 10, 2007, addressed to the petitioner from [REDACTED] for \$5,000 each;
5. Two checks, dated April 26, 2008 and April 29, 2008, addressed to the petitioner from [REDACTED] for \$12,725 and \$12,250;
6. Three checks, dated January 16, 2007, November 20, 2007, and November 22, 2007, addressed to the petitioner from [REDACTED] for \$2,200, \$2,600, and \$2,000;
7. Two checks, dated November 17, 2007 and November 18, 2007, addressed to the petitioner from [REDACTED] for \$2,000 each;
8. A check, dated November 17, 2007, addressed to the petitioner from [REDACTED] for \$2,000;
9. Two checks, dated October 15, 2007 and October 23, 2007, addressed to the petitioner from the [REDACTED] for \$900 and \$600;
10. A screenshot from an unidentified website reflecting that the petitioner's artwork, [REDACTED] is listed for \$12,000;
11. An agreement, dated April 24, 2008, reflecting that [REDACTED] commissioned the petitioner to create original oil and acrylic paintings between 2008 and 2010;
12. A screenshot from [REDACTED] reflecting a Level 4 wage of \$38,210 per year for the Chicago-Naperville-Joliet, Illinois area; and
13. A screenshot from www.web.uccs.edu reflecting the median salary of fine artists is \$35,260.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added].” We are not persuaded by counsel’s assertions on appeal. Counsel failed to submit any documentary evidence supporting her assertions that “[t]he Petitioner

submitted documentation that his paintings sell for \$600 to \$100,000 for large murals and \$3,000 to \$200,000 for sculptures.” In fact, regarding items 1 – 10, the largest amount was item 7 for \$12,725. We note that the documentary evidence fails to reflect if this amount reflects a single piece or multiple pieces of artwork. 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. 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).

Regarding item 11, while the documentary evidence reflects that the artwork is listed for \$12,000, the petitioner failed to demonstrate that he has sold the artwork for that amount. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that the petitioner to compare his salary or remuneration for services “in relation to others in the field.” In this case, the documentation submitted by the petitioner fails to reflect that his pieces of work have commanded a high selling price compared to other similar pieces of work. In other words, the petitioner failed to establish that he has commanded significantly high remuneration for services compared to others in his field. Merely submitting documentation that reflects a remuneration for services without evidence establishing that the petitioner has commanded significantly high remuneration for services compared to others in the field is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The petitioner failed to establish that his remuneration in the sales of his artwork was significantly high.

We note regarding item 11 that the agreement was dated on April 24, 2008, approximately two weeks prior to the filing of the petition and pertained to events occurring from 2008 to 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. at 49; *Matter of Izummi*, 22 I&N Dec. at 175; *Matter of Bardouille*, 18 I&N Dec. at 114. Although the agreement pertains to events scheduled after the filing of the petition, there is no documentation demonstrating that the either party fulfilled the agreement.

We further note regarding items 12 that the website reflects median wages of fine artists and painters in the Chicago-Naperville-Joliet, Illinois area, and item 13 reflects median wages in general for fine artists. However, median regional wage statistics, including Level 4 (fully competent) do not meet this requirement. Accordingly, the petitioner has not established that his remuneration for services is significantly high in relation to other fine artists and painters as a whole and not limited to Chicago and surrounding areas for median wages.

Finally, we note that we agree with the director in his assessment of annualizing the petitioner's salary. We are not persuaded that submitting selected checks for two months and then projecting the yearly earnings demonstrates the petitioner's actual annual earnings. The petitioner failed to submit, for example, income tax returns or other independent, objective evidence reflecting the his yearly earnings.

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

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

In the director's decision, he found that "[t]he evidence submitted does not make a claim of commercial success in the performing arts." However, in response to the director's notice of intent to deny, counsel claimed the petitioner's eligibility for this criterion based on the claimed awards won by the petitioner. Again, we will not presume that evidence relating to or even meeting awards criterion is presumptive evidence that the petitioner also meets this criterion.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the *performing arts*, as shown by *box office receipts* or record, cassette, compact disk, or video *sales* (emphasis added)." As the plain language of the regulation specifically refers to performing artists and not visual artists, such as the petitioner, this criterion does not apply to the petitioner. Moreover, this regulatory criterion requires evidence of commercial successes in the form of "box office receipts or record, cassette, compact disk, or video sales." As the petitioner failed to submit any evidence of "box office receipts or record, cassette, compact disk, or video sales," the petitioner failed to establish eligibility for this criterion.

Finally, on appeal, counsel failed to contest the decision of the director, offer additional arguments, or claim the petitioner's eligibility for this criterion. Therefore, we will not further discuss this criterion on appeal.

Accordingly, the petitioner failed to establish eligibility for this criterion.

B. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the following regulation categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. We further acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the director's notice of intent to deny, counsel claimed the petitioner's eligibility for comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) based on the petitioner's reference letters. However, the regulatory language precludes the consideration of

comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a fine artist/painter cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, counsel claimed the petitioner's eligibility in response to the director's intent to deny the petition and on appeal that specifically addresses eight of the ten criteria at the regulation at 8 C.F.R. § 204.5(h)(3). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner's occupation. Counsel provided no documentation as to why the provisions under the regulation at 8 C.F.R. § 204.5(h)(3) would not be appropriate to the profession of a fine artist/painter. Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Regardless, it is noted that the reference letters were thoroughly discussed under the original contributions criterion.

C. 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 established eligibility for only one of the regulatory criteria, in which at least three are required under 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 has garnered some awards, attention from the media, and monetary compensation for his artwork. However, the accomplishments of the petitioner fall 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." The petitioner's evidence 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), 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).

While the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), we also note that the some of the awards claimed by the petitioner appear to be from local competitions and festivals. Awards won by the petitioner in regional or local competitions do not indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than a limited competition. 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 painter in local competitions who has had limited success 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.”

Similarly, as it relates to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we again note that the petitioner failed to demonstrate that he has any published material about him relating to his work in professional or major trade publications or other major media. It would be expected that a painter with sustained national or international acclaim would have substantial media attention reflecting that he “is one of that small percentage who have risen to the very top of the field of endeavor.” Likewise, while the petitioner failed to establish eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner claimed eligibility for this criterion based on conducting workshops at local venues and teaching students, rather than evaluating the work of accomplished painters such as, as a member on a national panel of experts.

Moreover, 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

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*, 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.

critterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), we note that the petitioner's claims are based mainly on recommendation letters. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. 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 *Matter of Caron International*, 19 I&N Dec. at 795. We further note that the reference letters were dated over ten years from the filing of the petition, which is not reflective of or consistent with the petitioner's sustained national or international acclaim.

Furthermore, although the petitioner established eligibility for the display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), it is expected that a painter, such as the petitioner, would have his work displayed at exhibitions and showcases. However, the record contains no evidence to show, for instance, that the petitioner's exhibitions garnered any attention in a manner consistent with sustained national or international acclaim. For example, the petitioner failed to submit any documentary evidence reflecting that the exhibitions brought any critical acclaim. We are not persuaded that the mere exhibition of the petitioner's work is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Similarly, while the petitioner failed to establish eligibility for the salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), it is expected that a self-employed painter would sell his artwork to businesses and individuals to support himself. However, the petitioner failed to demonstrate that his artwork commands a significantly high selling price in the field. The petitioner failed to establish that the high value of his artwork is reflective of an individual who "is one of that small percentage who have risen to the very top of the field of endeavor."

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 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 contains uncertified translations and partial translations. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the title, date, and author of the published material. Moreover, the petitioner claimed eligibility for the high salary criterion without offering any comparison of salaries of others in his field beyond a limited jurisdiction. Further, counsel made various assertions without any supporting evidence. Finally, the petitioner relies on secondary evidence without evidence demonstrating that primary evidence does not exist or cannot be obtained. The lack of primary evidence combined with the numerous deficiencies noted does not demonstrate the necessary "extensive documentation" and is not indicative of an alien with sustained national or international acclaim.

The petitioner failed to submit evidence establishing 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. 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. O-1 Nonimmigrant Admission

We note that the petitioner submitted documentary evidence reflecting that he was last admitted to the United States on April 25, 2008, as an O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that “[t]he term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines extraordinary ability as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, we do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record.

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

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

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

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).

VIII. 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.

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.