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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

B₂

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

DEC 22 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,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

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

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

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

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that she submitted comparable evidence of her extraordinary ability. For the reasons discussed below, we uphold the director's decision.

I. Law

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

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

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

- (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. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's procedure for evaluating 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 approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119 - 1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, 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

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).

using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. 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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 9, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a singer.

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

In his decision, the director determined that the petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i). The director did not specifically address the evidence on which he based his conclusion. Upon review, we find the director's decision must be withdrawn.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser *nationally or internationally recognized* prizes or awards for excellence in the field of endeavor [emphasis added].” A review of the documentary evidence submitted by the petitioner reflects that the petitioner received a diploma for the singer ██████ for singing in a charity concert benefitting the orphans of the city of Moscow, a certificate for the first “reward” from the First International Contest “Sea Songs 2007” for ██████ a certificate for the ██████ ██████ dated 2007, and a certificate from the III International Competition of the Songs “Eastern Bazaar” for third place awarded to ██████

On appeal, counsel submitted an English translation of a power of attorney document which states on its face that it is a “translation from Russian to English.” The document states that the petitioner’s stage name is ██████ On appeal counsel states that this document is evidence that the petitioner used the alias ██████ The regulation at 8 C.F.R. § 103.2(b)(3) requires that “[a]ny 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.” In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that such evidence include “any necessary translation.” The petitioner failed to submit a certified English language translation of the document and as such she failed to comply with 8 C.F.R. §§ 103.2(b)(3), (4), and 204.5(h)(3)(iii), therefore, the AAO cannot accord any weight to this evidence. The petitioner has the burden of proving that she was in fact the

person who used the assumed name. The petitioner has not provided evidence that establishes that she used the assumed name and therefore, the AAO cannot confirm that the petitioner received the awards and prizes in the record of proceeding. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.” It is the petitioner’s burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of awards and prizes, she must also demonstrate that those awards and prizes are nationally or internationally recognized for excellence. In other words, the petitioner must establish her awards and prizes are recognized nationally or internationally beyond the awarding entities.

Notwithstanding, even if we concluded that the petitioner established that she received these awards, the petitioner failed to submit any documentation establishing that the awards are recognized beyond the awarding entities. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor, and it is her burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner’s awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner’s field of endeavor.

The record of proceeding contains a translation of the official regulations for the Sea Songs contest. The regulations state that the goal of the contest is the “support, development and popularization of modern European music, discovery and support of talented contestants, improvement sin the art of singing, and the widening of the art contacts.” The regulations state that the contest is limited to those ages 18 – 35 years old and the first prize is \$8,000.00.² The AAO notes that the certificate in the record states that the 2007 contest was the first year that the contest took place. The record also contains a document discussing a future contest in 2008 but there is not evidence that such a contest took place in 2008. We are not persuaded that an award in a contest that took place one time with no indication that the contest is still in existence qualifies as a nationally or internationally recognized award or prize.

The record of proceeding also contains the rules for the 15th “Pearl Paradise” competition. The rules state that the purpose of the competition is to:

search [for] talented authors, performers, bands, working in the genres of modern popular

² Although the translation includes the dollar sign, the translation is not clear as to whether the prize money is in U.S. dollars or in another currency.

song and instrumental music to assist their creative development and create new directions in a popular song and instrumental music, also with the purpose of development of the modern Ukrainian [illegible] song and of strengthening of creative relations between performers and collectives of Ukraine, co-operation and dialog between cultures of near and far abroad.

Accordingly, the petitioner has not established that she meets this criterion.

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

A review of the director's decision reflects that he found that the petitioner's submission of articles failed to establish eligibility for this criterion. We note that the petitioner did not address or contest the decision of the director on appeal.

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."

The record contains copies of the following:

1. The Producer's Center website Collection of Russian Beautiful listing 17 singers including [REDACTED] as second on the list;
2. The Producer's Center website listing [REDACTED] songs for downloading;
3. The Queen website listing performances of which, the petitioner is in four scheduled performances from February 24 – 25, 2005;
4. "The Hits of the 'Queen' in Kaluga," *Vest* (December 21, 2006);
5. "The Miracle of the 'Queen' in Kaluga," *Metsenat* (December 8, 2006);
6. "The New Life of the group Queen and Freddy Mercury," *Vot Tak* (September 2006);

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.

7. "Kaluga Listened to 'Queen' Live";
8. "'The Bohemians': From Kaluga to Rublevka";
9. The Moscow Dramatical Theatre "Modern" website;
10. "New Year with the stars of Moscow Musical 'Notre Dom De Paris'";
11. Tour with C. C Catch; and
12. "Tickets for the Little Bear Elka."

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. Items 1, 7, and 11 do not mention the petitioner.⁴ Although the rest of the publications mention the petitioner or ██████████ these publications are not about the petitioner and mention her as a participant or performer. The translation for item 8 states that the petitioner is only photographed. Photographs do not meet the plain language of the regulation which refers to written material requiring a title and author of the material.

The record of proceeding contains no evidence that the Producer's Center website, the Queen website, or the Moscow Dramatical Theatre "Modern" are considered major media. The record of proceeding contains evidence that *Vest* and *Mezenat* magazines are published in Kaluga, Russia 5 times per week and have an average of 6,000 to 11,000 readers. The record also contains evidence that *Vot Tak* magazine is published in Moscow, Russia once a week and has 245,500 readers. There is no evidence to establish that readership of these levels is tantamount to major media. However, the record contains no evidence that these publications are considered major media in Russia. Even if these publications are considered major media, the articles published by ██████████ do not include an author and therefore, do not meet the requirements of this criterion. As the petitioner failed to comply with the regulatory requirements, we will not consider this evidence to establish the petitioner's eligibility for this criterion.

The articles submitted by the petitioner fail to reflect published material about the petitioner relating to her work as a singer. In fact, none of the articles are primarily about the petitioner. Furthermore, the petitioner failed to submit any documentation establishing that any of the articles were published in professional or major trade publications or other major media.

Accordingly, the petitioner has not established that she meets this criterion.

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

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

⁴ See above for discussion on ██████████

regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original artistic contributions “of major significance in the field.”

On appeal, counsel states that the petitioner’s original compositions in the musical “The Little Prince” had an effect on the “entire musical field.” The record contains a letter dated October 20, 2009 from [REDACTED] a Russian actress and a stage director of the “Modern” theatre since 1989. [REDACTED] states that for more than 10 years the “Modern” theatre has held a professional production of “The Little Prince” featuring the petitioner’s songs. [REDACTED] attributes part of the success of the musical to the petitioner’s songs.

While [REDACTED] speaks highly of the petitioner’s songs she does not state, as counsel has, that the songs have affected the entire musical field. The record contains one person’s opinion. Although [REDACTED] states that the musical was “honored by the most famous critics and got excellent reviews” and that the play is successful enough to have toured, the record contains no primary evidence of this. Further, [REDACTED] gives no quantifiable way of measuring the play’s success or importance. She does not provide, for instance, the number of performances for the past 10 years, the amount that the musical has grossed, or the number of people who have seen the musical. This regulatory criterion not only requires that the petitioner make original contributions, the regulatory criterion also requires those contributions to be significant. We are not persuaded by a vague and solicited letter that does not explain how the petitioner’s contributions have influenced the field.

Accordingly, the petitioner has not established that she meets this criterion.

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

In his decision, the director determined that the petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The director did not specifically address the evidence on which he based his conclusion. Upon review, we find that the director’s decision must be withdrawn.

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].” At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In a brief filed with the Form I-140, counsel stated that the petitioner performed as the “female lead in the internationally known theatrical musical, Queen’s ‘We Will Rock You.’” The record contains an April 20, 2004 contract with a partial translation for the musical “We Will Rock You,” what appears to be part of a playbill without translation, a copy of photograph, and a letter purportedly from [REDACTED] dated February 16, 2009. As noted previously, the regulation at 8 C.F.R. § 103.2(b)(3) requires that “[a]ny 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.” In addition, the regulation at 8 C.F.R.

§ 204.5(h)(3)(iii) requires that such evidence include “any necessary translation.” The petitioner failed to submit a certified English language translation of the complete document and as such she failed to comply with 8 C.F.R. §§ 103.2(b)(3), (4), and 204.5(h)(3)(iii). Therefore, the AAO cannot accord any weight to this evidence. A copy of the photograph is not evidence that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Regarding the purported letter from [REDACTED] stating that the petitioner played Scaramouche and was one of two principal actresses in the Moscow production of the Queen musical “We Will Rock You,” the AAO notes that [REDACTED] letterhead includes a graphic of a star with a copy of his signature over it and that the signature at the end of the letter does not match the signature on the graphic. The letter states that “due to the success of the Moscow production, this cast continued touring all over Russia.” The letter does not provide information such as the number of performances in which the petitioner performed or the venues in which she performed or provide other documentation to demonstrate the success of the show. The letter also states that the musical has been a success “around the world, including long runs in Japan, Germany, Switzerland, Australia, Spain, USA, Canada” and for seven years in London.

Counsel also stated that the petitioner performed lead roles in the musicals “Cats, Romeo and Juliet, and Metro.” The only evidence that mentions these roles in the record of proceeding is an article entitled “New Year with the Stars of Moscow Musical ‘Notre Dom De Paris.’” The translation provided does not include an author, where it was published, or the date of publication. It is not clear if the document submitted is an article or an advertisement for the restaurant-cabaret “Mr. X.”

While the petitioner submitted some evidence that she performed in the musical “We Will Rock You,” the record contains no primary evidence that she performed in the musicals Cats, Romeo and Juliet, or Metro. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). As this criterion specifically requires the petitioner to submit evidence demonstrating that she *performed in a leading or critical role*, counsel’s statements are insufficient to demonstrate eligibility for this criterion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, this regulatory criterion also requires that the petitioner’s leading or critical role be with *organizations or establishments that have a distinguished reputation*. As stated above, there is no evidence in the record of proceeding that the petitioner performed in the musicals Cats, Romeo and Juliet, or Metro nor does the petitioner provide evidence that these organizations or Queens “We Will Rock You” have distinguished reputations. The AAO notes that although [REDACTED] noted that “We Will Rock You” has been successful worldwide, the letter submitted does not appear to have been signed

by

Accordingly, the petitioner has not established that she 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.

On appeal, counsel states that it is not possible to provide box office receipts or sales in every country or in every field. Counsel states that music is often pirated in Russia and downloaded for free on the internet. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evidence of the petitioner's commercial success, counsel provides a letter from dated October 18, 2009. In his letter states that he has been "successfully selling [the petitioner's], AKA his in compilations entitled states that there is "great demand" for the petitioner's music and that the petitioner's song has been #1 on the Russian music charts. also states that he has been in the music business for more than 10 years and that it is "nearly impossible to find actual data on CD sales in Russia" because the music industry faces "excessive pirating problems." adds that the "CD sales are by far [an] inaccurate representation of an artist's commercial success." believes that success should be judged "primarily by the income of the celebrity and the importance and frequency of the shows that the celebrity does per year." The AAO notes that the petitioner has submitted no evidence of her earned income and made no claim under the appropriate criterion for high salary.

contradicts himself in his letter by stating that on the one hand he has been successfully selling the petitioner's music and on the other hand it is nearly impossible to find actual data on CD sales. asserts that he has been in the music industry for more than 10 years and yet he is unable to provide his own sales figures for the petitioner's "successfully selling" music.

On appeal, in addressing this criterion, counsel submitted a power of attorney without a proper translation as discussed above, a contract for a letter from committing to sponsoring a future record, a letter from attesting to the petitioner's one-time payment of \$5,000 for her participation, and an internet printout regarding Russian pay-scale for artists. The AAO notes that the printout did not include a complete translation of the document as required by 8 C.F.R. §§ 103.2(b)(3), (4), and 204.5(h)(3)(iii). This regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated or performed in a play, has obtained funding for a future record, or received a one-time fee cannot meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts.

Accordingly, the petitioner has not established that she meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 596 F.3d 1115 at 1119 - 1120. 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).

As it relates to the award criterion, the plain language requires that the petitioner’s award be nationally or internationally recognized in the field of endeavor, and it is her burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner’s awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner’s field of endeavor. Although the competition may be open to participants of various countries, such diversity of contestants does not establish that a prize awarded by the competition is nationally or internationally recognized. The AAO notes that the rules for the Pearl Paradise competition limit vocalists to 18 – 36 years of age. With regard to awards won by the petitioner in competitions that were limited by age or experience level, such awards do not indicate that she “is one of that small percentage who have risen to the very top of the field of endeavor.” There is no indication that the petitioner faced significant competition from throughout her field, rather than being mostly limited to a few individuals in an age-based or other similarly 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. Likewise, it does not follow that a competitor like the petitioner who has had success in a competition restricted by age or non-professional status, 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.”

While the petitioner submitted a reference letter praising her songs, such a letter cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 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 a letter of support from a personal contact of the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of the letter as to whether it supports the alien’s eligibility. See *id.* at 795. Thus, the content of the writer’s statements and how she became aware of the petitioner’s reputation are

important considerations. Even when written by an independent expert, a letter solicited by an alien in support of an immigration petition is of less weight than preexisting, independent evidence of original contributions of major significance.

Finally, we cannot ignore that the statute requires the petitioner to submit “extensive documentation” of the beneficiary’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).

The petitioner failed to submit evidence demonstrating that she “is one of that small percentage who have risen to the very top of the field.” In addition, the petitioner has not demonstrated her “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The petitioner’s submission of contracts for performances at local businesses, which took place after the Form I-140 was filed, is not indicative of someone who is a part of that “small percentage who have risen to the very top of the field of endeavor.” We are not persuaded that an individual, whose prospective job offers include singing at a local restaurants, reflects sustained national or international acclaim compared to an individual who performs at national or international venues such as stadiums and arenas. 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. While the record reflects that the petitioner possesses talent as a singer and song writer, the record falls far short in classifying the petitioner as an alien or extraordinary ability pursuant to the requirements of the statute and regulations. Although the petitioner has a contract with [REDACTED], the record reflects that she is currently performing at local area restaurants, hotels, and dealerships. Such jobs are not indicative of someone who is recognized and has reached a level of sustained acclaim. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the

initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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

ORDER: The appeal is dismissed.