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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**

**PUBLIC COPY**

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FILE:

LIN 08 134 51021

Office: NEBRASKA SERVICE CENTER

Date: MAR 05 2010

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*UDeadrick*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied on April 14, 2009, by the Director, Nebraska Service Center, 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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means 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 specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on April 2, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a singer. However, the petitioner has also submitted documentation evidencing his occupation as a model and actor. The statute and regulations require the petitioner's national or international acclaim to be sustained and that he seeks to continue work in his area of expertise. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While singing, modeling, and acting are in the area of the arts, the three rely on very different sets of basic skills. Thus, singing, modeling, and acting are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

*Id.* at 918. The court noted a consistent history in this area. While the petitioner's artistic accomplishments as a model and actor are noted, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a singer.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

At the time of the original filing of the petition, the petitioner claimed he was awarded the "Certificate of Excellent" in 1982 from the National Competitive Modern Music Convention. In addition, the petitioner claimed to have received the "Special Award in Vocal" in 1985 at the Great Youth National Song Convention. In response to the director's request for evidence, the petitioner

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

submitted a letter from [REDACTED] of Nepal in New York, New York stating that the petitioner received:

1. Certificate of Quest of Talent at the National Competitive Modern Music Convention in 1982;
2. Special Award of Great Youth National Song Convention in 1985; and
3. Certificate of distinct division for special contribution in the field of modern song singing from Radio Broadcasting Service of Radio Nepal.

In the director's decision, he found that the petitioner failed to submit evidence substantiating his receipt of these awards. Further, the director concluded that the letter from [REDACTED] was insufficient absent primary evidence. Notwithstanding, the director also found that the petitioner failed to establish that these were nationally or internationally recognized awards or prizes.

A review of the record reflects that the petitioner did, in fact, submit certificates for the alleged awards for the 1982 Quest of Talent, 1985 Special Award, and 1982 distinct division at the time the petition was originally filed. Further, on appeal, the petitioner again submitted copies of these awards. However, the certificates are not in the English language. Both at the time of original filing and on appeal, the petitioner submitted translations of these certificates. However, the English translations failed to contain the names of the translators, were not certified as complete and accurate, and failed to indicate that the translators were competent to translate from the foreign language into English. The accompanied English translations failed to comply with 8 C.F.R. § 103.2(b)(3), which 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." Because the petitioner failed to comply with 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.

The petitioner also submitted a letter from [REDACTED] of Ministry of Information and Communication, stating that the petitioner "earned Excellent and Special Position in Annual competitive music festival" and "placed in the Special Class category of singer by Radio Nepal." On appeal, the petitioner submitted a letter from [REDACTED]

Radio Nepal, stating that the petitioner won the Quest for Talents and Special Vocal Award organized by [REDACTED]

We agree with the director that the letter from [REDACTED] is insufficient absent primary evidence. The letter is based on the certificates which were presented to him by the petitioner and not based on objective, independent evidence. However, we find the letters from [REDACTED] and [REDACTED] to be credible and persuasive. As Radio Nepal is a government-run radio station and is under the Ministry of Information and Communication of the Government of Nepal, [REDACTED] and [REDACTED] are representatives of Radio Nepal. [REDACTED] indicated that he "read the entire award giving ceremony news which was aired on national news broadcasting

network," and the library and news department records confirm the petitioner's receipt of the Quest for Talents and Special Vocal Award. Thus, the petitioner has established that he received these awards. However, we note that neither [REDACTED] nor [REDACTED] mentioned the petitioner's claim of receiving the certificate of distinct division for special contribution in the field of modern song singing from Radio Broadcasting Service of Radio Nepal. Therefore, the petitioner failed to establish receipt of this award.

Since the issue of the petitioner's actual receipt of two of these awards has been resolved, the issue now before us is the petitioner's establishment that the Quest for Talent and Special Award are nationally or internationally recognized prizes or awards. In support of the nature of these awards, the petitioner submitted documentary evidence, in the form of newspaper articles, of other Nepalese singers such as [REDACTED] receiving similar awards from [REDACTED]

[REDACTED] The petitioner also submitted documentary evidence regarding the background of Radio Nepal and [REDACTED]. While the documentary evidence provides information about the connection and influence of the Government of Nepal in Radio Nepal and the defunct [REDACTED]

[REDACTED] the petitioner failed to provide any information regarding the petitioner's awards. For example, the petitioner failed to establish that the competitions were at the national level. In addition, the 1985 Special Award appears to have been restricted to youths. Such award does 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 mostly limited to a few individuals in 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.<sup>2</sup> 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." Finally, the petitioner failed to submit documentary evidence establishing that his awards were nationally or internationally recognized prizes or awards for singing.

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<sup>2</sup> 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.

Notwithstanding the above, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s nationally or internationally recognized prizes or awards must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(i), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Even if we were to find that the petitioner’s awards are nationally or internationally recognized awards, which we clearly do not, the petitioner’s last award was in 1985, a period of 23 years prior to the filing of the petition. The petitioner has failed to establish the requisite sustained national or international acclaim.

Accordingly, the petitioner has not established 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.*

The petitioner claims eligibility for this criterion based on his membership in the Music Association of Nepal. The petitioner submitted a copy of his membership card and letters from [REDACTED] and [REDACTED]. Mr. [REDACTED] indicates that the petitioner is “registered as a ‘Special Class’ singer.” [REDACTED]

Oli states that “[T]he membership is distributed to the candidates identified as a national singer, musician, lyricists, composer and instrumentalists who have been working in their particular field of interest continuously.” In addition, while [REDACTED] states that “[a] national level award winner, long-term contribution, worked as judge of national level contest, popularity and reputation are the basis criteria of holding the membership of the association,” the petitioner failed to submit any official bylaws or other documentation supporting [REDACTED] claims.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation. The petitioner failed to establish that the criteria for membership in the Music Association of Nepal requires outstanding achievement as an essential condition for admission to membership as judged by recognized national or international experts.

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

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

In support of eligibility for this criterion, the petitioner submitted the following:

1. Unknown author, *It is Not Strange to Have a Desire of Love During Youth*, Rajdhani Daily, April 7, 2002;
2. Eliza Rana, *Thakur to Launch New Album*, The Rising Nepal, January 26, 2007;
3. Unknown author, *Mahesh to Release His New Album*, The Kathmandu Post, December 19, 2006;
4. Unknown author, *There is Even Pain in Heart*, Prakash, unknown date;
5. Unknown author, [Partially illegible title] *CD Album is to be Released Today*, Bypass Daily, November 20, 2007;
6. Unknown author, *Singer Who Became an Actor*, Kamana Magazine, March/April 2002;
7. Unknown author, *Singer Thakur Became Model*, Nepal Samacharpatra, December 19, 2001; and
8. Unknown author, *Thakur Sir Turned to be an Actor from Singer*, Everest Times, January 16-31, 2009.

Regarding Items 1 and 4-8, the petitioner failed to submit certified English language translations as required by 8 C.F.R. § 103.2(b)(3). In addition, 8 C.F.R. § 204.5(h)(3)(iii) requires “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.” The petitioner failed to provide the author of the articles for Items 1 and 3-8. Further, the petitioner failed to provide the date of the article for Item 4. Finally, regarding Item 8, the petition was filed on April 2, 2008. The article was published on January 16-31, 2009. Since the article occurred after the filing of the petition, we will not consider the evidence to establish the petitioner’s eligibility. 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.

We will only consider Item 2 for this criterion as it is the only article that complies with 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii). A review of the article states:

Though a very few are familiar with his singing talents, he has already three album[s] under his credit.

As a junior singer, he was the first to sing with Late Tara Devi.

\* \* \*

[The petitioner] who has been living in New York for the last few years to complete his PhD [sic] has also been performing shows in America during cultural and religious gathering of Nepalese there.

As indicated from the content in the article, the petitioner is an unfamiliar junior singer performing at local cultural events while completing his education in the United States. The petitioner does not possess the “required 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)(3). In addition, we do not find evidence that the petitioner had a single article published about him is sufficient to establish the level of acclaim required for this highly restrictive classification.

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

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

The petitioner submitted documentary evidence establishing that he judged the National Singing Competition organized by Birganj Sub-Metropolitan City on May 5, 2000. According to a letter from the Nepal Music Society, judging for this singing competition required the following criteria:

1. The judge must consist of national identity in his realm of expertise;
2. The judge must be at least national prize winner in his or her own field of endeavor;
3. The judge must have given contribution for the enhancement and promotion of the music and singing by spreading its significance to common people; and
4. The judge must possess an excellent dignity and reputation in the social structure of the life.

We further note that the director indicated in his decision that although the petitioner claimed to have served as a judge for the First Inter School Folk Dance Competition in 2003 and worked as a music lecturer at Kantipur Music College in Kathmandu, Nepal, the petitioner failed to submit documentary evidence other than letters to substantiate his claims. However, a review of the record reflects that the petitioner did submit a certificate reflecting that he served as a judge on January 15, 2003, and a letter from [REDACTED] of Kanthpur Music College, indicating that the petitioner served as a music lecturer. Notwithstanding, the petitioner failed to establish how his judging at a folk dance competition and music lecturer at a school establishes eligibility for this criterion. The petitioner’s one-time judging or lecturing of students is not commensurate with the acclaim required by this highly restrictive classification.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge 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)(iv), 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 documentation reflects that the National Singing Competition was at the national level and between Nepal and India, the petitioner failed to submit documentary evidence establishing the qualifications of the competitors. For example, judging a national competition involving professional singers is of far greater probative value than judging a local competition involving students or amateurs.

Accordingly, the petitioner has not established 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 petitioner submitted recommendation letters from [REDACTED]

[REDACTED], and

[REDACTED] In addition, the petitioner also submitted compact disks for [REDACTED]  
and [REDACTED] and an invitation to his compact disk release ceremony for [REDACTED]

We note that the recommendation letters highly praise the vocal abilities of the petitioner. However, talent in one’s field is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field. The letters of recommendation, compact disks, and invitation do not provide any evidence of the petitioner’s original artistic contribution of major significance in his field.

The letters of recommendation do not specify exactly what his original contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of those with whom he has worked and performed, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other vocalists nationally or internationally, nor does it show the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions 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 from experts supporting the petition 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 experts' 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 that one would expect of a vocalist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed 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 has not established that he meets this criterion.

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

The petitioner is a singer. It is inherent to the field of singing to perform on stage. Not every stage performance is an artistic exhibition or showcase. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience.

On appeal, counsel refers to the director's decision in which the director stated that this criterion was limited to visual artists. Counsel further claims that he "has seen this criterion applied to performing artists in other cases, and ask that it be considered in this case." Prior to this appeal, the petitioner never claimed eligibility for this criterion. In support of the appeal, the petitioner submitted a letter from [REDACTED] dated March 10, 2009, stating that the petitioner has been employed as a singer at the restaurant since December 1, 2008. In addition, the petitioner submitted a DVD of a Nepali Cultural Program featuring the petitioner, along with a certificate of appreciation, for his performance on April 26, 2008. Finally, the petitioner submitted a certificate of appreciation from the 26<sup>th</sup> ANA Convention in Baltimore, Maryland for his volunteer service from July 3-7, 2008. Since all of these events occurred after the filing of the petition, we will not consider the evidence to establish the petitioner's eligibility. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N at 49.

We find that the petitioner's performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be discussed later in this decision.

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

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

The petitioner claims eligibility for this criterion based on four reference letters from [REDACTED]

and [REDACTED] and [REDACTED] indicate that the petitioner's song have been featured in their movies. [REDACTED] indicates that the petitioner acted in its ad-film for [REDACTED]

However, the reference letters do not indicate the salary the petitioner commanded from any of these films. The petitioner failed to submit any documentary evidence establishing any salary or remuneration for services in relation to others in his field as a singer. The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary or other significantly high remuneration for services. In addition, the petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence establishing that the beneficiary has earned a level of compensation that places him among the highest paid singers. Finally, we note that the petitioner did not contest the decision of the director for this criterion on appeal.

Accordingly, the petitioner has not established 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.*

The petitioner claims eligibility for this criterion based on several recommendation letters, many of which have been previously discussed:

1. [REDACTED] of the Program Division for Nepal Television, states that the petitioner is a "well-known singer of Nepal whose many songs are being telecasted from Nepal Television";
2. [REDACTED] of Radion Nepal states that the petitioner "is an established and renowned singer of Nepal and who has been expeditiously signing, performing and recording his various category songs for over past 27 years";
3. [REDACTED] of Modern Cinema Company, states that the petitioner's songs have appeared in the movies Pirati, Raato Tika, and Maya;
4. [REDACTED] Managing Director for [REDACTED], states that the petitioner's songs have appeared in the movies Itihans, Tiraskar, and Pahilo Bhent;
5. [REDACTED], states that the petitioner's songs have appeared in the movies Indu, Dilma Mero, Timro Adhar, and Yaad Haroo;
6. Illegible name, Director of Production and Publicity for [REDACTED] states that "90,000 pcs. of his albums per month" were sold. Further,

- “[w]e expect the sale of approximate 6,000,000 pcs. of [the petitioner’s] new album ‘Mero Geet Unko Preet’ within the next six months”; and
7. Illegible name, Managing Director for [REDACTED] states that the petitioner’s album of [REDACTED] was exported to India, Pakistan, UK, USA, Japan, and Hong Kong.

The petitioner also submitted his compact disks and samples of his modeling for Gold (mustard oil),  
[REDACTED]

This regulatory criterion requires evidence of commercial successes in the form of “sales” or “receipts;” simply submitting letters indicating that the petitioner’s songs have appeared in movies or the production of two compact disks 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 in a manner consistent with sustained national or international acclaim at the very top of his field. Although the petitioner submitted letters which claim that he sold 90,000 pieces of his compact disk, the record contains no documentary evidence to support this claim and no evidence to demonstrate that this amount is equal to commercial success. Further, the expectation that the petitioner’s newest compact disk will sell 6,000,000 pieces is insufficient to meet this criterion as it is mere speculation. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N at 49. Further, there is no evidence showing that the petitioner’s performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature him. In addition, there is no evidence showing, for instance, that the petitioner’s musical recordings have generated substantial national or international sales.

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

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2).

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 or to be within the small percentage at the very top of his field. The record reflects that the petitioner’s prominence appears to have been at its peak in the 1980s. While the petitioner may have continued some recording, the record does not reflect that his musical recordings sustained any appeal. In addition, while the previously mentioned article indicates that the petitioner has recorded numerous songs and has modeled, the article also states that “very few are familiar” with his work now. Further, the article notes the petitioner’s affiliation with teaching. 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.