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



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

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DATE: DEC 23 2011

Office: TEXAS SERVICE CENTER FILE:



IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will 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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* 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 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 (9<sup>th</sup> 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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 1119-20.

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).

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on September 4, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an “Acrobatic Performer.” The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

The petitioner submitted a fill-in-the blank certificate from the [REDACTED] [REDACTED] stating that the [REDACTED] received a [REDACTED] [REDACTED] on February 5, 2001. The year of the award appears on the certificate as “19 2001” with the number 19 stricken through. The AAO notes that the prize certificate was presented to the [REDACTED] rather than the petitioner himself. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized prizes or awards. It cannot suffice that the petitioner was part of a large group that earned collective recognition. Further, the English language translation accompanying the prize certificate was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. *Id.* The petitioner also submitted information regarding the [REDACTED] posted at [REDACTED] stating: “Contenders enter categories according to age group . . . . [REDACTED] [REDACTED] is open to acrobats 12-18 years old . . . .” The record does not include specific information regarding the [REDACTED] Prize. There is no documentary evidence showing that the preceding prize equates to a nationally or internationally recognized prize for excellence in the field.

The petitioner submitted two “Certificate(s) of Merit” from the [REDACTED] [REDACTED] dated September 10, 2004. The English language translation accompanying the first certificate states: “[REDACTED] created and performed by [the petitioner] is awarded the [REDACTED] [REDACTED].” The English language translation accompanying the second certificate states: “[REDACTED] created and performed by [REDACTED] is awarded the [REDACTED].” The latter Certificate of Merit was presented to the [REDACTED] rather than the petitioner himself. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized prizes or

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

awards. It cannot suffice that the petitioner was part of a large group that earned collective recognition. Further, the English language translations accompanying the preceding Certificates of Merit were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In addition to the two Certificates of Merit, the petitioner submitted a document entitled "Description of Performance Evaluation" discussing the [REDACTED], which is also referred to in the document as the "Gold Lion Award National Acrobatics Competition." The document states: "The 6<sup>th</sup> National Acrobatics Competition is to be held on October 1 through 7, 2004 [REDACTED]." The document provides general information about the competition, but the author or source of this document is not identified. In response to the director's notice of intent to deny, the petitioner submitted an online printout from [REDACTED] discussing the "China Wu Bridge International Acrobatic Art Festival Trophy's design" in the form of an "iron lion." The English language translation accompanying the preceding online printout was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nothing in this online document relates to the [REDACTED] or establishes the significance of the September 10, 2004 Certificates of Merit submitted by the petitioner.

The petitioner's response also included an online article entitled "6<sup>th</sup> Gold Lion Acrobatics Fabulous Performances Won International Awards" printed from [REDACTED]. The English language translation accompanying the preceding online article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The article states that the [REDACTED] was successfully host [sic] [REDACTED] October 2004," but it does not specifically mention any awards received by the petitioner or the [REDACTED]. The AAO cannot ignore that the document entitled "Description of Performance Evaluation" and the online article entitled "6<sup>th</sup> Gold Lion Acrobatics Fabulous Performances Won International Awards" both state that the 6<sup>th</sup> China National Acrobatics Contest/Gold Lion Award National Acrobatics Competition took place in October 2004. The Certificates of Merit submitted by the petitioner, however, are both dated September 10, 2004, one month before the aforementioned competition had even taken place. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, the petitioner submits a December 2004 certificate issued by the Ministry of Culture of the People's Republic of China stating: "This is to certify that the acrobatic show program, titled [REDACTED] recommended by [REDACTED], has won the Gold Award of the 6<sup>th</sup> National Golden Lion Acrobatic Competition." The certificate states that the Gold Award was presented to the show entitled [REDACTED] in which the petitioner performed. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of "the alien's receipt" of nationally or internationally recognized

prizes or awards. It cannot suffice that the petitioner was part of a large group that earned collective recognition. There is no documentary evidence showing that the preceding award is a nationally or internationally recognized award for excellence in the field.

The petitioner submitted an October 29, 2006 Certificate of Merit from the Ministry of Culture of the People's Republic of China stating: [REDACTED] Created and Performed by [the petitioner] is awarded the [REDACTED] [REDACTED] [Emphasis added.] The English language translation accompanying the Certificate of Merit was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a document entitled "Description of Performance Evaluation" discussing the "5<sup>th</sup> National Youth Acrobatics Competition," but the author or source of this document is not identified. The document states that "there will be Gold, Silver, and Brass awards in the field of cultural acrobatics events, and Best Event Award, Screenwriter and Director Award, Performance Award, and Instructor Award," but there is no mention of a "Copper Award of Wenhua Acrobatics Creation." There is no documentary evidence showing that the petitioner's Copper Award equates to a nationally or internationally recognized award for excellence in the field.

With regard to the awards received by the petitioner in acrobatic competitions, the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, the petitioner failed to submit evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in his competitive category or age division. Awards received in obscure contests or in event categories and divisions with only a small pool of entrants is not evidence of national or international recognition. Moreover, a competition may be open to acrobats from throughout a particular country, but this factor alone is not adequate to establish that an award or prize is nationally recognized. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a June 2000 "Certificate of Honor" from the [REDACTED] [REDACTED] stating: "Dear [the petitioner]: City of Shenyang New Member of the Elite Team." The petitioner also submitted a "Certificate of Honor" from the Liaoning Province Bureau of Culture in recognition of his "performance in the acrobatic show at the 5<sup>th</sup> Art Festival of Liaoning Province." On appeal, the petitioner submits a March 12, 2010 [REDACTED] for "performing at the Lantern Festival banquet" in Chinatown and a [REDACTED] from the County of Los Angeles for his community service and performance at the Lantern Festival banquet. The preceding awards from the City of Los Angeles and the County of Los Angeles in 2010 were received by the petitioner subsequent to the petition's filing date. A petitioner, however, must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly the AAO will not consider the latter two awards in this proceeding. Nevertheless, the preceding Certificates of Honor, Certificate of Appreciation, and Commendation reflect local or regional recognition and do not constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Regarding the petitioner's Certificates of Merit, the Gold Award presented to the show entitled [REDACTED] at the 6<sup>th</sup> National Golden Lion Acrobatic Competition, and the petitioner's Certificates of Honor, the AAO notes that the petitioner did not submit evidence of the national or international *recognition* of his particular awards, such as national or widespread local coverage of his particular awards in artistic or general media. 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 his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's particular awards were recognized beyond the context of the events where they were presented and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, 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.*

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

The petitioner submitted a certificate issued by the China Acrobatics Association on July 3, 2006 identifying him as a [REDACTED]. The petitioner also submitted the Articles of the China Acrobatics Association. Chapter 3, Section 17 of the Articles states:

Qualifications of membership: Chinese citizen, 16 years or older, with extraordinary records in acrobatics, agreeable to our Articles of Association, to file application personally, with recommendations from two of our members, should directly file application with our Association; will become members of our Association upon acceptance.

The Articles of the China Acrobatics Association submitted by the petitioner do not define what constitutes "extraordinary records in acrobatics" and they do not indicate that prospective members' achievements are judged by recognized national or international experts in the field.

In response to the director's notice of intent to deny, the petitioner submitted a document entitled "Chinese Acrobatics Association" stating:

Prerequisites and procedures of applying Chinese Acrobatics Association membership:

Every applicant must have two other members as referrals, recommendations from current member units or authorized organizations by Chinese Acrobatics Association. After approving and executing necessary procedures, you will be approved as our official member. To apply for the membership, we require every applicant must won prizes in different competitions in China and the world; post qualification: level III performer or above; received special honors in acrobatics field; coach and talent performers will be qualified.

The English language translation accompanying the preceding document was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the document states that applicants are required to be a "level III performer or above." The AAO notes that the petitioner's certificate issued by the China Acrobatics Association identifies him as a [REDACTED]

[REDACTED] The documentation submitted by the petitioner does not list the specific standards for designation as a level I, II, and III performer or 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> grade performer. Accordingly, the petitioner has not established that his certificate from the Chinese Acrobatics Association designating him as a [REDACTED] required outstanding achievements or that prospective members' achievements are judged by recognized national or international experts in the field.

Aside from the preceding deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that his membership in the China Acrobatics Association meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that he meets this regulatory 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 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.<sup>3</sup>

The petitioner submitted a February 9, 2001 article in [REDACTED] entitled "Having Won All the Gold Awards in the [REDACTED]" an undated article in [REDACTED] entitled "[REDACTED]" a February 10, 2001 article in [REDACTED] entitled "[REDACTED]" an undated article in [REDACTED] entitled "An Evening of Acrobatics Revelry," an undated article in [REDACTED] entitled "[REDACTED]" a May 31, 2005 article in *Shenyang Daily News* entitled "[REDACTED]" and a March 1, 2009 article in the Las Vegas, Nevada Community Focus Section of the *World Journal* entitled "[REDACTED]." Three of the preceding articles do not mention the petitioner. The remaining articles, which only briefly mention the petitioner once, are about his troupe in general or the events in which he participated. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1,\*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner also submitted a photograph of him and another acrobat appearing in the "Metro News" section of the *Los Angeles Times*. The photograph shows the petitioner performing at a community event in Carson, California and includes an accompanying explanation stating: "[The petitioner], far left, and [REDACTED], performers from China, were part of the Asian Pacific Celebration in Carson on Sunday. Dozens of families attended the afternoon event at the city's community center." The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The photograph of the petitioner does not meet these requirements.

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<sup>3</sup> 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.

In addition to the preceding deficiencies, the petitioner has not established that the *Los Angeles Times*' "Metro News" and the *World Journal*'s Las Vegas "Community Focus" sections had significant distribution beyond those cities' boundaries. The petitioner submitted information about *Beijing Daily* from its "business blog," an uncertified English language translation of a document entitled "*Youth Beijing Daily Overview*" from an unidentified source, an uncertified English language translation of a document entitled "*Shenyang Daily Overview*" from the newspaper's website, an uncertified English language translation of a document entitled "*Yangcheng Evening News*," an uncertified English language translation of a document entitled "*Xinmin Evening News Circulation*," and material printed from the *Los Angeles Times* and the *World Journal*'s websites. In response to the director's notice of intent to deny, the petitioner submitted uncertified English language translations of Chinese language printouts from [REDACTED] and [REDACTED] providing circulation information for *Yangcheng Evening News* and *Xinmin Evening News*. Aside from the English language translations of the preceding Chinese language documents not being certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3), the AAO notes that USCIS need not rely on self-promotional material originating from the preceding newspapers or their publishers. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9<sup>th</sup> Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). There is no reliable evidence (such as objective circulation information from an identified independent source accompanied by a certified English language translation) showing the distribution of the preceding newspapers relative to other Chinese or U.S. media to demonstrate that the submitted articles were published in professional or major trade publications or other major media.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner submitted letters of support from his personal contacts discussing his acrobatic achievements, skills, and talent. Success and talent as an acrobatic performer, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

[REDACTED], a Los Angeles performer and former acrobat of the [REDACTED], states:

[The petitioner] was the youngest performer in our troupe. Ever since he was little, we felt that he possessed the talents to become an extraordinary acrobat. In order for someone to become an outstanding acrobatics performer, other than the bodily quality and talent, it takes perseverance and painstaking spirit. [The petitioner] had all of these

qualities. The talented senior performers all had high expectations of him and we all agree that he had met our expectations

Over the past ten years or so, I have been observing his growth. Good news about [the petitioner] is released from time to time. He has won awards from both national and international competitions. One of his act, “██████████”, involves two rotations in the air through the fifth hoop that is approximately 8.5 feet tall, which exceeded any previous height and difficulty at the time of the competition in 2004. In another act, “██████████” [the petitioner] also set a new record in walking on an ascending wire from three meters to thirty meters, which had never been achieved by anyone either nationally or internationally.

\* \* \*

Toward the end of 2007, [the petitioner] was invited to the States to perform. He earned great applause and reports from the media. During that period, I invited him to come to Los Angeles to participated [sic] in a variety of performances including charitable shows where he received grand ovation from the audience at every show. I can foresee the bright future in this young man with extraordinary artistic skills.

██████████ asserts that the petitioner “exceeded any previous height and difficulty” standards in jumping through a fifth hoop and that he “set a new record in walking on an ascending wire from three meters to thirty meters,” but the record does not include documentary evidence to support ██████████ assertions. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Further ██████████ does not provide specific examples of how the petitioner’s original work impacted the acrobatics field at large or otherwise constitutes original contributions of major significance in the field.

██████████, Troupe Leader of the Dalian Acrobatic Troupe of China and Vice Chairman of the China Acrobatics Performers Association, states:

██████████ and ██████████ are located in the same province with closer relationship with each other. I have observed many times the performances of [the petitioner]. He has given me very deep impressions. He is an extraordinary performer. Not only does [the petitioner] possess the physical qualities, he also has extremely high talent in acrobatic art. He makes new creations after absorbing the traditional ways in performing arts and forms his own styles. In the 2004 national competition, [the petitioner] earned two gold medals for his performance in the “██████████” and “██████████.” He achieved the peak of his life on an individual level and re-defined the magnificent performance of acrobatic art.

\* \* \*

In the past ten years, [the petitioner] has made many accomplishments. He is an extremely talented acrobat who has achieved world class performing level.

compliments the petitioner on his talent as an acrobat and his performances, but does not provide specific examples of how the petitioner's work has notably influenced the field at large or otherwise equates to original contributions of major significance in the field of acrobatics. With regard to comment that the petitioner received two gold medals in national competition in 2004, the AAO notes that the petitioner's awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

, Director of the China Acrobatics Performers Association, Vice Chairperson of Theoretical Research Committee of China Acrobatics Performers Association, and the Chairperson of the Acrobatics Performers Association of Yunnan Province, states:

[The petitioner] is an [sic] unique acrobatics performer. He is willing to face challenges. He is innovative. [The petitioner] takes the essence of the traditional ways of performing and continues to improvise and creates new techniques. He truly is a prodigy in the acrobatics society.

\* \* \*

I witnessed [the petitioner's] achievements in the 2004 national competition. He made two breakthroughs in his performance in the " " and " " which had never been accomplished by anyone before. I truly appreciate his artistic level and talent and know that he will continue to accomplish more in the many years to come.

comments on the petitioner's acrobatic talent and innovative style, and asserts that the petitioner made breakthroughs in his " " and " " performances, but she does not provide specific examples of how the petitioner's contributions have impacted the field such that his work rises to the level of original contributions of major significance in the field. Furthermore, the AAO notes that the preceding letters from " ", " ", and " " do not include an address, a telephone number, or any other information through which they can be contacted.

On appeal, counsel argues that the letters of support are sufficient to demonstrate the petitioner's eligibility for this regulatory criterion. Counsel also asserts that the petitioner's award winning " " performance meets the elements of this criterion. Counsel states:

Petitioner performs balance on multiple layers of metal wheels on top of a padded chair . . . Practices for these tasks are very dull and monotonous. It requires natural talent, above average perseverance and a strong moral [sic] of the performer. This program has a very high requirement of both physical and mature mental balancing ability.

It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). While the petitioner has earned the admiration of his references, 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 acrobatic performers, nor does it show that the field has significantly changed as a result of his original work.

The opinions of experts in the field are not without weight and have been considered above. 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 (Comm'r 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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 that one would expect of an acrobat who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, the AAO cannot conclude that he meets this criterion.

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

Counsel has asserted that the petitioner's public acrobatic performances constitute artistic exhibitions or showcases and, thus, serve as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii). The petitioner submitted evidence showing that he performed at acrobatic competitions, the Long Beach Dragonboat Festival (2009), the Gala Ball of the Greater San Gabriel Valley Lodge of the Chinese American Citizens Alliance (2009), an event in support of the "[REDACTED] for Congress" election campaign (2009), an Earth Day 2009 event at the University of Nevada at Las Vegas, nursing homes in Las Vegas, the 2002 Chinese Spring Festival Gala, the 14<sup>th</sup> Opening of Dalian International Fashion Day's Culture Show Dinner, and the Chinese Central Television "Heart to Heart" Gala. The petitioner also submitted photographs of him posing with Chinese celebrities [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] at various events, but

the petitioner did not submit documentary evidence of his actual performances. On appeal, the petitioner submits documentation indicating that he performed at the “Evening Gala in Celebrating the Announcements of the Mascots for the 2008 Beijing Olympic Games” (2006), the Lantern Festival Banquets in Los Angeles and Los Angeles County (2010), and the Asian Culture Festival held at the Clark County, Nevada Library (2010). The petitioner’s 2010 performances post-date the petition’s filing date. As previously discussed, a petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly the AAO will not consider the petitioner’s 2010 performances in this proceeding.

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

Even if the AAO were to accept that this regulatory criterion was relevant to the performing arts, not every performance is a showcase or an exhibition. For example, it cannot be credibly asserted that a touring symphony orchestra is exhibiting or showcasing the work of every member of the orchestra. Alternatively, a revue designed to showcase a select number of performers is more persuasive evidence. In evaluating the evidence, it is important to look at how the performance is promoted. Promotions focusing on the identity of the show in general are less persuasive than promotions that focus on the identity of the artist or a select group of artists. Regarding the above events in which the petitioner performed, there is no promotional material or event programs specifically identifying the petitioner as the artist whose work is being exhibited or showcased.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner submitted a “Work Certificate” issued by the [REDACTED] stating that he was one of the major young performers of the troupe. At issue is whether the petitioner played a leading or critical role for the troupe as a whole. The petitioner’s evidence does not demonstrate how his position differentiated him from the other acrobats in his troupe, let alone the troupe’s leadership. The evidence submitted by the petitioner does not establish that he was responsible for the [REDACTED] success or standing to a degree consistent with the meaning of “leading or critical role.” The petitioner also submitted an article about the troupe posted at [REDACTED], but the English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). There is no reliable documentary evidence showing that the [REDACTED] has earned a distinguished reputation relative to other Chinese acrobatic troupes. Further, the record does not include evidence documenting the petitioner’s leading or critical role for any other organizations or establishments with a distinguished reputation. As previously discussed, section

203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the submission of evidence that the alien has performed in a leading or critical role for “organizations or establishments” in the plural. Therefore, even if the petitioner were to submit supporting documentary evidence showing that his role and the Shenyang Acrobatic Troupe’s reputation meet the elements of this criterion, which he has not, the plain language of this regulatory criterion requires evidence of a leading or critical role for more than one distinguished organization or establishment.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the form of “sales” or “receipts;” simply submitting documentation indicating that the petitioner performed acrobatics in public does not meet the requirements of this regulatory criterion. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner has achieved commercial successes in the performing arts. For instance, there is no evidence showing that performances headlined by the petitioner consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature him. Accordingly, the petitioner has not established that he meets this regulatory criterion.

### *Summary*

The AAO concurs with the director’s determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

### ***B. Final Merits Determination***

The AAO will 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.” Section

203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (v), (vii), (viii), and (x).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. The petitioner's evidence is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. For instance, there is no evidence showing that the petitioner faced a significant pool of top competitors in China, the United States, or internationally. Awards won by the petitioner in age-restricted contests, in competitive categories with only a limited pool of entrants, or in competitions whose reputation is undocumented do not establish 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). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that an acrobat who has received awards in age-restricted competition, obscure tournaments, or event categories and divisions with only a small pool of entrants should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes 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.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. 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." Further, there is no evidence indicating that the petitioner has received any awards in national or international competition subsequent to 2006. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. *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). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, the petitioner has not established that he holds membership in

associations that require outstanding achievements of their members, as judged by recognized national or international experts in his field. The AAO notes that the petitioner's certificate issued by the China Acrobatics Association identifies him as a "2<sup>nd</sup> Grade Performer" of the [REDACTED]. The documentation submitted by the petitioner does not list the specific standards for designation as a 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> grade performer. According to the information about [REDACTED] submitted by the petitioner, [REDACTED] was "a 1<sup>st</sup> Grade Performer of the [REDACTED]." The petitioner has not established that his "2<sup>nd</sup> Grade Performer" level is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. *Cf., Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (USCIS has long held that has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability").

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), the AAO notes that none of the submitted articles are primarily about the petitioner. Further, the March 1, 2009 article in the Las Vegas, Nevada Community Focus Section of the *World Journal* and the photograph appearing in the "Metro News" section of the *Los Angeles Times* on April 7, 2008 reflect local media attention and fail to demonstrate the petitioner's national acclaim. The petitioner has not established that his level of media coverage is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. Moreover, even if the petitioner were to submit documentary evidence demonstrating that *Beijing Daily*, *Youth Beijing Daily*, *Shenyang Daily*, *Yangcheng Evening News*, and *Xinmin Evening News* qualified as major media, which he has not, there is no evidence of articles about the petitioner in such newspapers subsequent to 2005. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. 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). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

With regard to the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence demonstrating that the petitioner's work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that he has made original artistic contributions of major significance in the field, the AAO notes that the petitioner's claim is based partly on recommendation letters. While such letters can provide important details about the petitioner's experience and activities, 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 personal contacts. 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). 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). 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 that one would expect of an acrobat who has sustained national or international acclaim at the very top of the field. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vii), as previously discussed, there is no documentary evidence demonstrating that the petitioner has displayed his work at “artistic exhibitions or showcases.” Moreover, irrespective of whether the petitioner’s performances meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the record does not establish that the petitioner’s performances are at a level consistent with national or international acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. For instance, in regard to the petitioner’s acrobatic performances in China, the record lacks evidence showing that the petitioner’s acrobatic performances were the primary focus of the galas and other events in which he participated. Further, there is no evidence showing that the petitioner has performed at significant national or international venues subsequent to his arrival in the United States in 2007. As previously discussed, the statute and regulations require the petitioner to demonstrate that his national or international acclaim has been *sustained*. 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). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) is not commensurate with *sustained* national or international acclaim as of the petition’s filing date.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner did not submit evidence establishing that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(x), the failed to submit documentary evidence of “sales” or “receipts” showing that he achieved commercial successes in the performing arts. Moreover, the petitioner has failed to submit evidence of sales or receipts showing his commercial successes in the performing arts after arriving in the United States in 2007. As previously discussed, the statute and regulations require the petitioner to demonstrate that his national or international acclaim as been *sustained*. 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). The documentation submitted for the criterion at 8 C.F.R. § 204.5(h)(3)(x) is not commensurate with *sustained* national or international acclaim as of the petition’s filing date.

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as an acrobatic performer, or being

among that small percentage at the very top of the field of endeavor. The AAO notes the letter of support from [REDACTED] predicting a “bright future” for the petitioner. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The submitted evidence is not indicative of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

### III. Conclusion

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

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

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

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

**ORDER:** The appeal is dismissed.