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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**

B2

FILE:

Office: TEXAS SERVICE CENTER Date:

FEB 09 2011

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, on July 10, 2009. The director dismissed the petitioner's motion to reopen and motion to reconsider on November 16, 2009. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

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

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

I. Law

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

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

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

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

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

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

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

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

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

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

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

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

II. Translations

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

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

As cited above, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires a "full English language translation which the translator has certified as complete and accurate." Because the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

III. Analysis

A. Evidentiary Criteria

This petition, filed on December 17, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a creative director in advertising. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

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

1. 1996 Award of Excellence at the [REDACTED]
2. 1997 Silver Award at the [REDACTED]
3. 2000 Award of Excellence at the [REDACTED]
4. 2002 Gold Award at the [REDACTED]
5. 2003 Award of Excellence at the [REDACTED] and

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

6. 2004 Silver Award at the [REDACTED]

In support of these claims, the petitioner submitted reference letters from three individuals:

A. [REDACTED] Silla University, who simply stated that the petitioner won the six awards listed above (we note that the names of some of the awards are different than claimed by counsel and will be addressed later in our discussion of this criterion);

B. [REDACTED], Louisiana State University, stated:

[The petitioner] received the 1996 Award of Excellence at the [REDACTED] [REDACTED] through his Volvo Automotives newspaper advertisement.

The Kyung Hyang Advertising Awards are held by one of the three daily newspapers in Korea that were established in 1942. The first award was granted in 1992, and the nominees are annually chosen from the Kyung Hyang Daily newspaper and magazine advertisements. Advertising agency creative directors select on [sic] hundred o [sic] the more than ten thousand applicants. A group of renowned retirees experienced in the advertising field select ten of the previous one hundred. A group of advertising major professionals select the winners of the grand prize, second, third, and fourth places, and honorable mention. The Kyung Hyang Advertising Awards are fourth highest ranked advertising award in Korea; and

C. [REDACTED] stated:

[The petitioner] won the Silver Award at 1997's [REDACTED]
[REDACTED]

The National Korean Advertising Awards are held by [REDACTED] [REDACTED] which was established in 1986. This award program is comprised of advertising companies and agencies that span twenty different categories. In 1994, a prestigious group of specialists in Korea, who continue to judge these awards, presented the first honors. Each of the more than one hundred advertising agencies in Korea selected five of their most outstanding projects to be submitted to the judging committee. The creative directors for each respective advertising agency choose one hundred of the submitted works in the first selection process. A group of renowned retirees experienced in the advertising field select ten of the previous one hundred. A group of advertising major professionals select the winners of the grand prize, second, third, and fourth places, and honorable mention. The National

Korean Advertising Awards are the premier advertising award program in Korean.

I am aware that beyond this award, [the petitioner] has won many other awards.

The director found that the petitioner failed to establish eligibility for this criterion. Specifically, the director found that “[a]wards based on achievement or other traits deemed praiseworthy by the awarding organization does not constitute nationally or internationally recognized ‘awards for excellence in the field [sic] of endeavor.’” On motion, the petitioner submitted another reference letter from [redacted] who also generally stated that the petitioner won the six awards listed in items 1 – 6 above. The director dismissed the motion and found that “[e]vidence of the criteria necessary for the participation in and final selection of the awards was not provided by sources that are affiliated with the sponsoring entity.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor [emphasis added].” The petitioner failed to submit primary evidence of his receipt of the claimed awards, such as evidence from the awarding entities. The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

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

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

available, it may require that the applicant or petitioner submit the required document or statement.

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

Moreover, the petitioner also submitted the following documentation:

- i. A partial and uncertified translation a document for the [REDACTED] [REDACTED] won a "bronze medal" for the [REDACTED] Award";
- ii. A partial and uncertified translation of a document from [REDACTED] [REDACTED] that only lists in English the petitioner's name, [REDACTED] [REDACTED]
- iii. A partial and uncertified translation of a document for the "Advertising year book Issue on 2005" claiming:
 - a. [REDACTED] won an outstanding award for a Volvo Korea advertisement at the [REDACTED] [REDACTED]
 - b. [REDACTED] won a bronze medal Rinnai Korea advertisement at the [REDACTED]
 - c. [REDACTED] won an outstanding award for [REDACTED] [REDACTED] in 2000;
 - d. [REDACTED] won a gold award for an Asiana Air Line advertisement at the [REDACTED] [REDACTED]

- e. "Sanagam Communications" won an outstanding award for a Bank Nonghup advertisement at the [REDACTED] in 2003; and
 - f. [REDACTED] won a bronze medal for a [REDACTED] Award"; and
- iv. A partial and uncertified translation of a document for the "Advertising year book Issue on 01/03" claiming that [REDACTED] advertisement at the [REDACTED] Award."

As indicated above, the petitioner failed to submit full and certified translations of the foreign language documents. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Notwithstanding, regarding item i, the document fails to reflect that the petitioner won the bronze medal at the [REDACTED] Award." In fact, the uncertified and partial translation only credits the [REDACTED]" as receiving the bronze medal.

Regarding item ii, as indicated above, the partial and uncertified translation only lists the petitioner's name, [REDACTED]. The translation fails to indicate exactly what the document represents. We note that counsel indicated in her exhibit list at the time of the original filing of the petitioner that document was an [REDACTED] award to [the petitioner] in 2003 as the [REDACTED] for his creative work at [REDACTED] a marketing agency and subsidiary of [REDACTED]." Again, the partial and uncertified translation fails to support the claims of counsel.

Regarding item iii, the partial and uncertified translation fails to reflect that the petitioner won any of the awards listed in items a – f. Instead, the document reflects that [REDACTED] and [REDACTED] were credited with winning the awards. We note that items a – c indicate that the petitioner was the copywriter or creative director. However, because the petitioner submitted partial translations, there is not enough information to establish that they were awarded to the petitioner. Furthermore, we cannot conclude that awards that were not specifically presented to the petitioner are tantamount to his receipt of nationally recognized awards. It cannot suffice that the petitioner was one member of a large group that earned collective recognition.

Similarly, regarding item iv, the partial and uncertified translation credits [REDACTED] as receiving the president award and not the petitioner. In fact, the petitioner is not even listed in the translation.

Again, counsel claimed the petitioner's eligibility for this criterion based on items 1 – 6 listed above. However, because the petitioner submitted partial and uncertified translations, the petitioner failed to establish that the claimed awards listed in items i – iv are the same awards

listed in items 1 – 6. For example, counsel claims that the petitioner won the [REDACTED] (1996 Award of Excellence). [REDACTED] claimed that the petitioner won the [REDACTED] 1996 Award of Excellence [emphasis added].” [REDACTED] claimed that the petitioner won the “1996 Award of Excellence at the [REDACTED] Advertisements Awards [emphasis added].” [REDACTED] claimed that the petitioner won the [REDACTED] 1996 Award of Excellence [emphasis added].” Item iii.a. reflects an “*outstanding* award [emphasis added]” at the [REDACTED] (1996) [emphasis added].” Each document submitted by the petitioner has a different name of the award. 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.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser *nationally or internationally recognized prizes or awards for excellence* in the field of endeavor [emphasis added].” In other words, the petitioner must demonstrate that his awards are nationally or internationally recognized for excellence. While counsel provided background information regarding the awards listed in items 1 – 6 in her cover letter at the time of the original filing of the petition and in support of the motion, counsel failed to submit any documentation supporting her assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

Regarding the letter from [REDACTED] while he stated that the awards are “held by one of the three daily newspapers in Korea” and a “group of advertising major professionals select the winners,” he failed to establish that the awards are nationally or internationally recognized for excellence. Moreover, [REDACTED] indicated that the awards “are the fourth highest ranked advertising award[s] in Korea” without explaining his claim or professional opinion. Likewise, [REDACTED] stated that the awards are “comprised of advertising companies and agencies that span twenty different categories” and are “the premiere advertising award program in Korea.” However, [REDACTED] failed to explain why the awards are the premiere advertising award program. The central issue for this criterion is the national or international recognition for excellence of the awards and not the selection criteria for the awards. Simply submitting two reference letters that generally indicate that the awards are the fourth highest ranked or premiere awards are insufficient to establish the national or international recognition for excellence of the awards.

Not only must the petitioner demonstrate his receipt of awards and prizes, he must also demonstrate that those awards and prizes are nationally or internationally recognized for excellence. Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. In this case, for the reasons discussed above, the petitioner failed to demonstrate his receipt of the claimed awards, as well as establishing that the awards are nationally or internationally recognized for excellence in the field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on his "crucial and critical roles" for businesses and corporations such as

We note that the regulations contain a separate criterion regarding the leading and critical role. 8 C.F.R. § 204.5(h)(3)(viii). We will not presume that evidence relating to or even meeting the leading or critical role criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, the petitioner failed to establish that his roles at individual companies establish original contributions of major significance in the field as a whole and not limited to companies in which the petitioner was employed. Therefore, while the petitioner's leading or critical role claims will not be considered under this criterion, they will be addressed under the next criterion.

Counsel made numerous assertions at the time of the original filing of the petition and on motion without providing any independent, objective evidence beyond the petitioner's personal statement. The petitioner's unsupported statements are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). We cite representative examples below:

While working at [redacted] [the petitioner's] contributions were so influential he was asked to create advertisements for Oriental Watches. In so doing, [the petitioner] worked on a specific product advertisement for Korea's cultural wedding dowry project: Galaxy, a high-class watch to Koreans. During this process, [the petitioner] created two copyrights: "Nature is God's greatest masterpiece" and "Galaxy strives to be the masterpiece of a watch." The latter of the two was finalized, generating enormous revenues and resulting in a brand-name status. [The petitioner's] contributions throughout the aforementioned advertisement campaign were of great value, both creatively, and economically.

* * *

[The petitioner] played a crucial role in launching the copyright, [REDACTED] [REDACTED]. The aforementioned slogan benefited [REDACTED] to the extent that they used it for a period of three years, an exceptionally lengthy amount of time to implement a campaign. The success of the aforementioned advertising campaign was so remarkable it is now widely and consistently used as a case study for advertising students.

* * *

One of [the petitioner's] most notable campaigns includes the work he successfully completed for [REDACTED]. [The petitioner] collaborated with top actresses such as [REDACTED] employing the copyright, "A woman's change is limitless..." [The petitioner] and his team successfully generated revenues after advertising the high-class cosmetics to middle- to upper-aged women. The concepts implicit in [the petitioner's] [REDACTED] Cosmetics campaigns are very much relevant, and certainly influential, with regard to similar advertising campaigns conducted today.

As previously indicated, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. at 189 n.6.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original contributions "of major significance in the field." Even if the assertions of counsel were supported by documentary evidence, the assertions only refer to the specific businesses and not to the field as a whole. Merely making an original contribution to a business or corporation is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) that requires the original contribution to be "of major significance in the field." Counsel also made assertions without providing any specific examples such as the petitioner's statement that the "advertising campaign was so remarkable it is now widely and consistently used as a case study for advertising students." Counsel failed to provide a single example where the petitioner's advertising campaign is used as a case study for students. Moreover, counsel claimed that "similar advertising campaigns conducted today" use the concepts in the Ro Jae Cosmetics campaign without identifying a single campaign or any of the concepts.

A review of the record of proceeding reflects that the petitioner submitted several reference letters. We cite representative examples here:

[REDACTED], stated:

As a creative director, [the petitioner] produced many successful campaigns. One of his successful jobs includes the Asiana Airlines campaign, "Beautiful people, Asiana Airlines," which began in 2002. Not only is this campaign still active today in 2008, but this campaign is well liked and acknowledged as it launched its advertisement in 2002 with Korea's notable soccer coach [REDACTED]

While [REDACTED] indicated an original contribution of the petitioner, the Asiana Airlines campaign, he failed to demonstrate that this advertisement campaign has been of major significance to the field and not limited to Asiana Airlines.

[REDACTED] stated:

[The petitioner] has experiences of attending various seminars and advertising associations both in the country and overseas.

* * *

I believe that these different experiences and lessons gave [the petitioner] a very unique and insight toward his pieces of work. I will give you an example through Korea's top food industry, [REDACTED], and its product, "Look Joy's" campaign. [The petitioner] and I jointly worked this campaign with the head copyright, "Eating the World." We filmed in three different countries with different national versions (Korean, Chinese, and Japan). From here, the Chinese episode was nominated as the 3rd popular commercials, resulting in soaring profits.

We are not persuaded that attending seminars and advertising associations around the world demonstrates original contributions of major significance in the field. Assuming that attending seminars and associations is unique to the petitioner's occupation, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Dep't. of Transp.*, 22 I. & N. Dec. 215, 221 (Commr. 1998). Finally, Mr. Choi refers to the petitioner's impact solely on Cheong Jung Won rather than to the field as a whole.

[REDACTED], stated:

As a creative director, [the petitioner] produced many successful pieces of work. For one example, there was a campaign in 2004 for a Korean yogurt company,

Paldo. He produced the campaign slogan, "Mix with your right hand, mix with your left hand, [REDACTED] campaign. This campaign helped make the product one of the top in its items. This campaign is a good example of how he incorporated both humor and humanism into the advertisement.

Similar to the other reference letters, [REDACTED] indicated an original contribution the petitioner specifically made to Paldo. However, [REDACTED] failed to establish that the petitioner's contribution has been of major significance to the field as a whole not restricted to Pablo.

[REDACTED] stated:

One of the advertisements for [REDACTED] "Together" is still considered very moving and warm. When the advertisement was made it was bit odd for senior Korean couple to be walking together holding their hands due to the culture. However, in the advertisement the senior couple holds hands and exchange beautiful smiles which is thought to have brought Korean advertising into more emotional direction. To further explain the visual the senior man walk in the park with his wife following him from behind. As the camera moves, a young couple with a gentle grin and moves to his wife and holds her hands. The senior couple walks together holding their hands in the warm Spring day in the park. At the end, a narration of [REDACTED] is with you in path taken together." This advertisement helped to increase senior couples as their clientele for the ShinHan Life Insurance. All the advertisement we worked on together always brought great sense of warmth and smile to the people watching the advertisement.

Although [REDACTED] indicated that it identified those individuals who thought the petitioner's work brought Korean advertising into more emotional direction, [REDACTED] failed to explain who "thought" of this direction and the impact or influence of the advertisement such as other advertisers copied or emulated the work of the petitioner to demonstrate the major significance.

We acknowledge that the reference letters reflect that the petitioner has made original contributions to the specific businesses in which he was employed as a creative director. However, the petitioner failed to establish, and the letters fail to reflect, that his original contributions have been of major significance to his field. For example, the petitioner failed to demonstrate that his work on limited advertisements have influenced or impacted the field beyond the employing businesses. The letters submitted on the petitioner's behalf fail to reflect original contributions of major significance in the petitioner's field and contain general statements that lack specific details. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating

the language of the statute or regulations does not satisfy the petitioner's burden of proof.³ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner's work has been original, unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

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

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

As stated previously, counsel claimed that the petitioner performed in critical roles for businesses and corporations such as [REDACTED]

[REDACTED] The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. A review of the record of proceeding reflects that the petitioner submitted partial and uncertified translations of advertising yearbooks for 1992, 1994 - 1997, and 2000 - 2004. Again, as the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Regardless, a review of the partial and uncertified translations reflect that according to the 1992 advertising yearbook, the petitioner was the copywriter for [REDACTED] whose client was [REDACTED]. According to the 1994 and 1995 yearbooks, the petitioner was the

³ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

copywriter for [REDACTED] whose client was [REDACTED]. According to the 1996 yearbook, the petitioner was the copywriter for [REDACTED] whose client was [REDACTED]. According to the 1997 yearbook, the petitioner was the copywriter for [REDACTED] whose client was [REDACTED]. According to the 2000 – 2002 yearbooks, the partial and uncertified translations appear to be advertisement campaigns from [REDACTED] for [REDACTED]. However, the petitioner is not credited in the documentation as being involved in the advertising campaigns. According to the 2003 and 2004 yearbooks, the partial and uncertified translations appear to be advertisement campaigns from [REDACTED] for [REDACTED].

The petitioner is not credited as being involved in the advertising campaigns for any of the businesses.

Because the petitioner submitted partial and uncertified translations, the petitioner failed to establish that the advertisement yearbooks demonstrate that he ever performed in a role, let alone a leading or critical role, for [REDACTED] as well as other companies, such as [REDACTED] claimed by counsel and the petitioner throughout this proceeding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. at 189 n.6.

Even if the petitioner established that he was employed by any of the claimed businesses, or he participated on their advertising campaigns, which he did not, the petitioner failed to establish that he performed in a leading or critical role. Merely submitting documentation indicating that he was the copywriter or creative director for an advertisement without evidence comparing his position to others in the company as a whole is insufficient to demonstrate that he performed in a leading or critical role. For example, the petitioner failed to submit any documentary evidence, such as an organizational chart, that compares his position as a copywriter to that of other copywriters much less positions of greater responsibility in the company such as managers or supervisors.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the leading or critical role be “for organizations or establishments that have a distinguished reputation.” While the petitioner submitted documentary evidence regarding the reputation of some of the claimed employers such as [REDACTED] the petitioner failed to submit any documentary evidence establishing the distinguished reputations of the other organizations such as [REDACTED]

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner failed to establish eligibility for any of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner established that he has performed the routine duties of a copywriter and creative director for several advertisement campaigns. However, the personal and business accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The petitioner has not distinguished himself from other copywriters or creative directors in his field of expertise.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5,

1991). In this case, the petitioner claimed eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) based on reference letters without submitting primary evidence of his awards. We are not persuaded that the petitioner could not submit primary evidence of nationally or internationally recognized awards for excellence. Furthermore, the petitioner claimed eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) without demonstrating that his contributions have been of major significance to the field. We note that the self-serving letters of recommendation praising the petitioner cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Finally, the petitioner claimed eligibility for the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) based on documentation that failed to demonstrate that he performed in a leading or critical role. We also note that counsel made various assertions without providing any supporting documentation or based on the petitioner's personal statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 189 n.6. In addition, the petitioner submitted numerous foreign language documents that failed to contain full and certified English language translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). We are not persuaded that such evidence with the numerous deficiencies noted equate to "extensive documentation" and is demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989).

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

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 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.

IV. Conclusion

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

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

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

ORDER: The appeal is dismissed.