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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

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

FEB 17 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

(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,"

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).

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).

II. Translations

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted non-certified English language translations, partial translations, and foreign language documents without any English language translations. 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.

Although at the time of the original filing of the petition the petitioner submitted a single certified translation, it is unclear which documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

Furthermore, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires a “full English language translation.” However, the petitioner submitted partial translations for some of her foreign language documents.

Finally, the record of proceeding reflects that the petitioner submitted several documents without any English language translations, let alone fully certified translations. 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 April 30, 2009, seeks to classify the petitioner as an alien with extraordinary ability in watercolor arts. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

In the director's decision, he found:

To qualify as major media, the publication should have significant national circulation or distribution. It is the petitioner's burden of proof not only to submit the article itself, but also evidence that establishes that it was published in a qualifying publication. It can be expected that any publication can provide information as to its circulation. The petitioner did provide articles about her artist work and exhibitions. There were articles fro [sic] to [REDACTED] to name a few. The petitioner did not provide evidence in the record that the periodicals had national circulation or distribution.

Based on the information in t he [sic] record the petitioner meets this criteria.

While the director found that the petitioner failed to submit any documentary evidence regarding the "national circulation or distribution," the director then indicated that the petitioner met the criterion. It is not apparent from the director's decision if the petitioner established eligibility for this criterion. Nonetheless, will review the record of proceeding to determine if the petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). 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).

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

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

1. An uncertified translation of an announcement entitled, [REDACTED] [REDACTED]” February 20, 2006, unidentified author, [REDACTED]
2. An uncertified translation of an article entitled, [REDACTED] [REDACTED]” November 19, 2009, [REDACTED] [REDACTED]
3. An uncertified translation of an article entitled, [REDACTED] [REDACTED]” February 18, 2006, unidentified author, [REDACTED]
4. An uncertified translation of a snippet entitled, [REDACTED] [REDACTED]” January 3, 2009, unidentified author, [REDACTED]
5. An announcement entitled, [REDACTED]” May 5, 2005, unidentified author, [REDACTED]
6. An uncertified and partial translation of an article entitled, “[REDACTED] [REDACTED],” 1997, [REDACTED]
7. An uncertified translation of an article entitled, [REDACTED] [REDACTED]” February 17, 2006, [REDACTED] [REDACTED]
8. An uncertified translation of an article entitled, [REDACTED] [REDACTED] at Amerasia Bank,” January 8, 2009, unidentified author, [REDACTED]
9. An uncertified translation of an article entitled, [REDACTED] [REDACTED] February 23, 2006, unidentified author, [REDACTED]y; and
10. A section entitled [REDACTED] unidentified date, [REDACTED] and [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as

major media because of significant national distribution, unlike small local community papers.³ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

Regarding items 1 and 2, the petitioner failed to submit certified translations of the documents. Moreover, regarding item 1, the petitioner failed to include the author of the announcement. Furthermore, the announcement is not about the petitioner relating to her work. Instead, the announcement merely publicizes an exhibition of the petitioner. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Regarding item 2, the article was published on November 19, 2009. However, the petition was filed on April 30, 2009. Eligibility must be established at the time of filing. Therefore, we will not consider this item as evidence to establish the petitioner’s eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Nonetheless, the article is not primarily about the petitioner relating to her work. Rather, the article is about the [REDACTED] exhibition, [REDACTED]. While the petitioner is briefly mentioned in the article as displaying her work at the exhibition, the article also mentions several other artists such as [REDACTED].

Regarding item 3, the petitioner failed to submit a certified translation of the article. In addition, the petitioner failed to include the author of the article. Regardless, a review of the article fails to reflect that it is about the petitioner relating to her work. Instead, the article simply announces the petitioner’s exhibition at the [REDACTED]. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (upholding a finding that articles about a show are not about the actor).

Regarding item 4, the petitioner failed to submit a certified translation of the snippet, as well as to include the author of the snippet. Nevertheless, a review of the snippet fails to reflect published material about the petitioner relating to her work. Instead, the snippet is about [REDACTED] holding an exhibition at the [REDACTED]. Although the petitioner is mentioned one time as being a teacher to [REDACTED] the fact remains that the snippet is not about the petitioner relating to her work.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

Regarding item 5, the document is merely an announcement that publicizes the petitioner's exhibition at [REDACTED]. As previously indicated, articles that are not about the petitioner do not meet this regulatory criterion.

Regarding item 6, the petitioner failed to submit a certified and full translation of the article. As the petitioner failed to submit a full translation of the article, the petitioner failed to establish that the article is published material about the petitioner relating to her work. However, based on the partial translation, the article appears to be about the [REDACTED] and not about the petitioner. Although the partial translation mentions the petitioner, the article also mentions other artists such as [REDACTED].

Regarding item 7, while a review of the article reflects published material about the petitioner relating to her work, the petitioner failed to submit a certified translation of the article.

Regarding items 8 and 9, the petitioner failed to submit certified translations of the articles. Further, the petitioner failed to include the authors of the articles. Moreover, the articles are not primarily about the petitioner. While the articles provide some brief background information about the petitioner, the articles are about the petitioner and [REDACTED] displaying their work at the [REDACTED] as well as some background information about [REDACTED] and the petitioner's exhibition at [REDACTED].

Regarding item 10, the petitioner failed to include the date of the material. Furthermore, the material is not about the petitioner relating to her work. Instead, it merely reflects a section in a book that contains some of the petitioner's work. Based on the cover of the book submitted by the petitioner, it appears that the book contains the works of over 80 other artists. As such, the [REDACTED] is not about the petitioner relating to her work; rather, the book is about various Chinese artists.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) also requires that the material be published "in professional or major trade publications or other major media." The petitioner failed to submit any documentary evidence establishing that [REDACTED] are professional or major trade publications or other major media.

Regarding [REDACTED] the petitioner submitted information from [REDACTED] dated November 21, 2001, that indicated that "major Chinese newspapers are found in the [REDACTED] and [REDACTED]. Moreover, the petitioner submitted an article entitled, [REDACTED] dated March 25, 2002, from *The New York Times* that indicated that "[i]n recent months, the two biggest Chinese dailies in [REDACTED] . . . claims a readership of 50,000 in the New York area and 390,000 around the country [REDACTED]. In addition, the petitioner submitted screenshots from the publications' websites: [REDACTED].

News). We are not persuaded that being considered as major Chinese newspapers in the United States also demonstrate professional or major trade publications or other major media. Even when compared to a publication like [REDACTED] far fall short in reflecting that they are professional or major trade publications or other major media.

Regarding [REDACTED] the petitioner submitted screenshots from [REDACTED] that represents a press release for the [REDACTED]. The petitioner failed to submit any independent, objective evidence establishing that the [REDACTED] is a professional or major trade publication or other major media.

As evidenced above, all of the petitioner's foreign language documentary evidence failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3) requiring certified and full translations and 8 C.F.R. § 204.5(h)(3)(iii) also requiring the necessary translation and author of the material. Moreover, while the petitioner submitted one article reflecting published material about the petitioner and her work, the petitioner failed to establish that the material was published in professional or major trade publications or other major media. Even if we were to find that the petitioner's single article met the regulatory requirements, the petitioner only established eligibility for one article in which the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires more than one. The burden is on the petitioner to establish every element of this criterion.

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

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

The director found that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought."

A review of the record of proceeding reflects that the petitioner submitted an uncertified and partial translation of a publication entitled, [REDACTED]. Nonetheless, based on the partial translation, the petitioner is listed as the [REDACTED]. At the time of the filing of the petition, counsel claimed that the petitioner "edit[ed] and select[ed] artwork for publication in the journal." However, counsel failed to submit any documentary evidence supporting his 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). In fact, Fei Wang is listed as the "Chief

Editor.” The petitioner failed to establish that her role as a [REDACTED] demonstrates that she participated “as a judge of the work of others.”

The petitioner also submitted an uncertified translation of an [REDACTED] stating:

This is to appoint [the petitioner] as the secretary of [REDACTED] [REDACTED] and is responsible for the [REDACTED] cultural exchange jobs in the U.S. including the contact, the creation of calligraphy and art’s development, research and exhibitions etc.

The petitioner failed to submit any other documentary evidence establishing that her appointed role as secretary demonstrates that she participated “as a judge of the work of others.” Indeed, [REDACTED] description of the petitioner’s roles as a secretary fail to reflect that she was even expected to judge the work of others. Even if the appointment letter indicated that her position as secretary would involve the judging of the work of others, which it clearly does not, the petitioner failed to establish that she actually judged the work of others.

As indicated above, the petitioner failed to submit certified and full translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the documentary evidence submitted by the petitioner fails to reflect that she participated as the judge of the work of others pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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

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

In the director’s decision, he concluded that the petitioner failed to establish eligibility for this criterion without addressing any of the documentary evidence submitted by the petitioner. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” In accordance with *Kazarian* 596 F.3d at 1122, the petitioner submitted sufficient documentary evidence reflecting that her work was displayed at artistic exhibitions or showcases. Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that she meets the plain language of the regulation for 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 met the plain language of the regulation for one 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 who last entered the United States as a B-1 nonimmigrant has garnered minimal attention in the media and has displayed her artwork at some galleries, museums, and venues. However, the accomplishments of the petitioner fall far short of establishing that she “is one of that small percentage who have risen to the very top of the field of endeavor” and that she “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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

As it relates to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we again note that the petitioner failed to demonstrate that she has any published material about her relating to her work in professional or major trade publications or other major media. It would be expected that an artist with sustained national or international acclaim would have substantial media attention reflecting that she “is one of that small percentage who have risen to the very top of the field of endeavor.” Even if the petitioner’s documentary evidence reflected published material about her in professional or major trade publications or other major media, which it did not, we are not persuaded that ten articles are reflective of “sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.”

Likewise, while the petitioner failed to establish eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner claimed eligibility for this criterion based on serving as a “Chair Man” of *Art Status* and being appointed as secretary for IAA. Notwithstanding that the petitioner failed to establish that she has ever judged the work others, the petitioner failed to submit evidence demonstrating that she judged acclaimed artists. Cf., *Matter of Price*, 20 I&N

Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). Even if the petitioner’s role as [REDACTED] involved reviewing the work of others, we cannot conclude that the petitioner’s role demonstrates a level of expertise indicating that she is among that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in her field, such as evidence that serving as [REDACTED] reflects that she has reviewed the work of nationally or internationally acclaimed artists, that she has received and completed independent requests for review from a substantial number of artistic journals or publications, or that she served in an editorial position for a distinguished journal, we cannot conclude that the petitioner is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). An evaluation of the significance of the petitioner’s judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11.

Furthermore, the petitioner established eligibility for the display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii) based on her work displayed at [REDACTED]. We also note that the petitioner submitted uncertified and/or partial translations of documentary evidence claiming that the petitioner displayed her work at the [REDACTED].

We note that the petitioner submitted documentary evidence without any translations, let alone certified translations, as well as documentary evidence that failed to indicate where the alien’s work was displayed. For example, the petitioner submitted a document indicating that the petitioner’s work would be displayed between September 28, 2007 and October 10, 2007. However, the document failed to indicate where this display was to occur. We also note that the petitioner submitted on appeal the previously discussed article entitled, [REDACTED] dated November 19, 2009, and a press release from the [REDACTED] for the petitioner’s display of her work on January 22, 2010. Eligibility must be established at the time of filing. Therefore, we will not consider this item as evidence to establish the petitioner’s eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. We also note that on appeal, the petitioner submitted two letters from [REDACTED] of [REDACTED] who mentioned some of the petitioner’s exhibitions, such as [REDACTED] as well as generally claiming that her work was displayed around the world. However, the petitioner failed to submit any primary evidence of the display of her work pursuant to the regulation at 8 C.F.R. § 103.2(b)(2). Regardless, it is expected that an artist, such as the petitioner, would have her work displayed at exhibitions and showcases. However, the record contains no evidence to show, for instance, that the petitioner’s exhibitions garnered any attention in a manner consistent with sustained national or international acclaim. For example, the petitioner failed to submit any documentary evidence reflecting the prestige of the exhibitions and that the exhibitions brought any critical acclaim. We are not persuaded that the

mere exhibition of the petitioner's work is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). In this case, the record of proceeding reflects uncertified translations, partial translations, and foreign language documents without any English translations. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the authors of the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the petitioner submitted documentary evidence of her positions as [REDACTED] and secretary without submitting documentation reflecting that the positions entailed the judging of the work of others. Finally, because of the deficiencies in the documentary evidence, the petitioner only that demonstrated that her work was displayed at two exhibitions. The lack of conforming and substantial documentation is not persuasive evidence that the petitioner has "extensive documentation" and is an individual with sustained national or international acclaim.

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

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

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

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

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

ORDER: The appeal is dismissed.