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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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[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER Date:

JAN 11 2011

IN RE:

Petitioner:
Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ubeadndc
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on September 17, 2009, 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 as an actress. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her 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 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.

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

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 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.

The petitioner claims eligibility for this criterion based on her receipt of two awards:

1. [REDACTED]

2. [REDACTED]

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. Regarding item 1, the petitioner submitted the following documentation:

- A. A photograph of a trophy with a translation reflecting that the trophy was awarded to the petitioner from [REDACTED] for "her career as an Actress";
- B. A letter, dated June 2008, from [REDACTED] who stated:

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

[P]er the results of the selection process performed by means of a public survey, [the petitioner] [has] been officially designated to receive our highest ward [sic] [redacted], award that is granted to important companies, men and/or women that due to their valuable contribution to culture and entertainment have had a positive impact on our country;

C. A letter, dated June 2, 2009, [redacted] who stated:

[redacted] was held for the first time last year, in 2008, and has the goal to promote cultural and artistic activities as well as award annually the very best artists in the country. . . . On our first edition of [redacted] we were proud to award [the petitioner] a special prize for her [redacted]

D. A screenshot from www.oem.com of an article entitled, [redacted] and [redacted]

E. A screenshot from [redacted] reflecting:

[T]he objective of this festival is to provide spectators and guests with days filled with magic, while at the same time supporting the regional craft industry, arts and culture.

Regarding item 2, the petitioner submitting the following documentation:

- i. A photograph of a trophy with a translation reflecting that the trophy was awarded to the petitioner for [redacted] for “her outstanding participation in representing our country internationally”;
- ii. A letter from [redacted] of Guatemala, who stated the prize “denotes tenacious work of heart and total devotion to an artistic career”; and
- iii. A letter from [redacted] in Atlanta, Georgia, who stated:

[The petitioner], along with other leading artists and entertainers, was given an award by the Vice President in recognition of her significant contributions to the arts in Latin American [sic] and for her sustained television career, as well as leading her name and talents to charitable

causes in the country. She is one of the most successful Guatemalan actresses in soap operas in Latin America and has brought great honor to our country.

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

Regarding item 1, we are not persuaded that the documentary evidence submitted by the petitioner demonstrates a nationally or internationally recognized prize or award for excellence. Rather, the award from the [REDACTED] reflects a locally recognized award from [REDACTED]. Moreover, the purpose of [REDACTED] is to promote tourism and to support the financial area. The petitioner failed to submit sufficient documentary evidence demonstrating the national or international recognition of the award outside of [REDACTED]. Moreover, we cannot ignore the fact that the letter from [REDACTED] indicated that the petitioner won the award in the first year that the event was held. Given the fact that this was the first time this competition was conducted, the petitioner failed to show that any subsequent awards have been well-established in the field so as to demonstrate their national or international recognition for excellence. The mere submission of documentary evidence that only demonstrates the petitioner’s receipt of an award is insufficient to establish eligibility for this criterion without documentary evidence reflecting the national or international recognition for excellence.

Regarding item 2, the petitioner submitted sufficient documentary evidence establishing that the award is nationally recognized for excellence. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner to demonstrate her receipt of more than one prize or award. Therefore, as discussed above, the petitioner only established eligibility for one award. As such, the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner claims eligibility for this criterion based on the following two memberships:

1. Asociacion National de Actrooes (ANDA) (National Association of Actors); and

2. Asociacion National de Interpretes (ANDI) (National Association of Interpreters).

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. Regarding item 1, the petitioner submitted the following documentation:

- A. A non-translated document that appears to reflect that the petitioner is a member from ANDA;
- B. A letter from [REDACTED], ANDA, who stated that the petitioner is a member of ANDA, and it "is the official Union that represents actors in theater, cinema, television, and advertising fields in Mexico"; and
- C. Screenshots from www.wikipedia.org regarding ANDA.

Regarding item 2, the petitioner submitted the following documentation:

- i. A non-translated document that appears to reflect that the petitioner is a member of ANDI;
- ii. A letter from [REDACTED] of ANDI, who stated that the petitioner is a member of ANDI and:

Not every person who gets involved in TV, radio, movie industry or theater is considered to be an artist that can join our association. Only those who achieve a certain level of success in Mexico, have a valid Work Contract with a company in their industry, and have material (audio or video) of such high value that will be featured again in their industry, will qualify to be invited to form part of our association. Once a member, our Association will guarantee that his/her rights as an artist of high caliber are respected;

- iii. A translation of a screenshot from www.andi.org; and
- iv. Copies of royalty payments from ANDI.

We note, regarding items 1 and i, the petitioner failed to submit any English language translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, regarding item iii, while the petitioner submitted a certified translation, the petitioner only submitted a partial screenshot of the original document. As such, the petitioner failed to submit the full screenshot(s) to which the translation pertains.

We further note, regarding item C, that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).³

Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is 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.

In this case, while the petitioner demonstrated that she is a member of ANDA and ANDI, the petitioner failed to establish that membership with ANDA or ANDI requires outstanding achievements of its members, as judged by recognized national or international experts in the field. Specifically, regarding ANDA, the documentary evidence simply reflects that ANDA is an official union that represents actors in Mexico. The petitioner failed to submit any documentary evidence reflecting the membership requirements for ANDA, so as to establish that membership with ANDA requires outstanding achievements of its members, as judged by recognized national or international experts in the field.

Regarding ANDI, while [REDACTED] indicated that “[n]ot every person who gets involved in TV, radio, movie industry or theater is considered to be an artist that can join

³ See also a copy of the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on December 14, 2010, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

[ANDI],” we are not persuaded that “achiev[ing] a certain level of success in Mexico,” “hav[ing] a valid Work Contract with a company in their industry,” and “hav[ing] material (audio or visual) of such high value that will be featured again in their industry” demonstrate outstanding achievements of its members. While ANDI’s requirements restrict membership to all artists, the requirements indicated by Mr. [REDACTED] fall far short in reflecting that outstanding achievement is an essential condition for membership. Furthermore, the petitioner failed to establish that membership with ANDI is judged by recognized national or international experts in the field.

Merely submitting documentary evidence reflecting the petitioner’s memberships without evidence reflecting that the petitioner’s memberships with associations require outstanding achievements of their members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). It is the petitioner’s burden to establish every element of this regulatory criterion.

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

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

In the director’s decision, he found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A partial translation of an article entitled, [REDACTED] from [REDACTED]’ September 19, 2008, [REDACTED]
2. An article entitled, [REDACTED] [REDACTED]’ September 8, 2008, [REDACTED]
3. A partial translation of an article entitled, [REDACTED] [REDACTED]” October 6, 2008, [REDACTED]
4. A partial translation of an article entitled, [REDACTED] [REDACTED]” October 8, 2008, [REDACTED]
5. A partial translation of an article entitled, [REDACTED] [REDACTED] December 17, 2008 [REDACTED]

6. A partial translation of an article entitled, [REDACTED] as an Actress and [REDACTED] April 7, 2008, [REDACTED];
7. A partial translation of an article entitled, [REDACTED] in 2008," January 10, 2009, [REDACTED]
8. A partial translation of an article entitled, [REDACTED] March 7, 2009, [REDACTED]
9. A partial translation of an article entitled, [REDACTED] December 4, 2008, [REDACTED] www.peoplespanol.com;
10. A partial translation of an article entitled, [REDACTED] November 5, 2008, [REDACTED] www.nydailynews.com/latino/espanol;
11. An article entitled, [REDACTED] April 2008, unidentified author, [REDACTED]
12. A partial translation of an article entitled, [REDACTED] October 5, 2008, [REDACTED]
13. A partial translation of an article entitled, [REDACTED] October 11, 2008, [REDACTED]
14. A partial translation of a snippet entitled, [REDACTED] with [REDACTED] December 2008 [REDACTED]
15. An article entitled, [REDACTED] November 20, 2008, unidentified author [REDACTED]
16. An article entitled, [REDACTED] October 23, 2008, [REDACTED]
17. An article entitled, [REDACTED] December 17, 2008, [REDACTED] author, [REDACTED]
18. An article entitled, [REDACTED] October 14, 2008, [REDACTED]

19. A partial translation of an article entitled, [REDACTED]
[REDACTED]
20. A partial translation of an article entitled, [REDACTED]
[REDACTED]" October 30, 2008,
[REDACTED]
21. An article entitled, [REDACTED]
[REDACTED], " November 9, 2008, unidentified author,
22. A press release entitled, [REDACTED]
[REDACTED] September 23, 2008 [REDACTED]
23. A press release entitled, [REDACTED]
[REDACTED] unidentified author, September 26,
2008, [REDACTED]
24. A press release entitled, [REDACTED]
[REDACTED] June 9, 2008, unidentified author,
[REDACTED]
25. A press release entitled, [REDACTED] June 11, 2008,
[REDACTED] and
26. Various photographs without any translations of the accompanying captions and snippets.

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.⁴

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

⁴ 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.

translation.” We note here that the petitioner submitted partial translations for the majority of her foreign language documents. As the petitioner failed to submit full English language translations as required pursuant to the regulation at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii), we will not accord any weight to this evidence in this proceeding.

We further note that the petitioner submitted several articles that were posted on the Internet. However, we are not persuaded that articles posted on the Internet from a printed publication are automatically considered major media. The petitioner failed to submit independent, supporting evidence establishing that the websites are considered major media. In today’s world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. However, we are not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.”

Regarding item 1, the petitioner failed to submit a full English language translation. Moreover, regarding *El Nuevo Herald*, besides the information from *Wikipedia*, the partial translation from www.elnuevoherald.com, the petitioner submitted screenshots from www.miamiheraldadvertising.com reflecting that *El Nuevo Herald* “is the largest Spanish language newspaper in South Florida” with daily circulation statistics of 80,576. However, when compared to the daily circulation statistics of 261,476 for *The Miami Herald*, which is the parent company of *El Nuevo Herald*, we are not persuaded the *El Nuevo Herald* is a professional or major trade publication or other major media.

Regarding item 2, the petitioner failed to submit any documentary evidence establishing that *Foro Univision* is a professional or major trade publication or other major media.

Regarding item 3, the petitioner failed to submit a full English language translation. In addition, the petitioner submitted a screenshot from www.abyznewslinks.com merely reflecting that [REDACTED]. Without the submission of further documentary evidence, we cannot conclude that [REDACTED] is a professional or major trade publication or other major media.

Regarding items 4 and 5, the petitioner submitted the same screenshot from [REDACTED] simply reflecting that [REDACTED] is one of several Guatemalan newspapers. Furthermore, regarding item 4, the petitioner failed to submit a full English language translation. In addition, the article appears to be an interview in which the petitioner responds to the interviewers questions and not published material about the petitioner regarding her work. Regarding item 5, the translation also appears to include only a partial translation of the article. Moreover, the article appears to be about various Guatemalan artists, not solely about the petitioner and her work.

Regarding items 6 and 7, the petitioner failed to submit full English language translations. Furthermore, the articles appear not to be about the petitioner relating to her work. Instead, the articles appear to be interviews conducted with the petitioner in which the petitioner merely

responds to the questions. The articles do not discuss the petitioner relating to her work. In addition, the petitioner submitted a partial translation of a screenshot from [REDACTED], as well as the screenshot from [REDACTED] simply reflecting that [REDACTED] is a [REDACTED]

Regarding item 8, similar to items 6 and 7, the article appears to be an interview with the petitioner in which the petitioner responds to the interviewer's questions rather than an article about the petitioner and her work. Moreover, the petitioner failed to submit a full English language translation and submitted the screenshot from [REDACTED] merely reflecting that [REDACTED] is a newspaper in Guatemala.

Regarding item 9, the petitioner failed to submit a full English language translation of the article. Further, notwithstanding the screenshots from [REDACTED] the information from Wikipedia is about [REDACTED]. Without additional documentary evidence, we cannot conclude that [REDACTED] is a professional or major trade publication or other major media.

Regarding item 10, the petitioner failed to submit a full English language translation. In addition, the petitioner submitted circulation statistics from [REDACTED] regarding the [REDACTED]. While we acknowledge that the *New York Daily News* is a professional or major trade publication or other major media, the petitioner failed to submit any documentary evidence regarding [REDACTED]

Regarding item 11, the petitioner failed to include the author of the article. Moreover, the petitioner failed to submit any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or other major media.

Regarding item 12, the petitioner failed to submit a full English language translation. Furthermore, the petitioner failed to submit any documentary evidence establishing that [REDACTED] is a professional or major trade publication or other major media.

Regarding item 13, the petitioner failed to submit a full English language translation. In addition, the article appears not to be about the petitioner relating to her work. Rather, the article appears to be an interview conducted with the petitioner in which the petitioner merely responds to the questions. The article does not discuss the petitioner relating to her work. Further, the petitioner failed to submit any documentary evidence demonstrating that *Gente 21* is a professional or major trade publication or other major media.

Regarding item 14, the petitioner failed to indicate the author of the snippet and submitted only a partial translation of the snippet. Moreover, the snippet cites the petitioner's responses to a few questions. Finally, the petitioner failed to submit any documentary evidence establishing that [REDACTED] is a professional or major trade publication or other major media.

Regarding items 15 – 21, the petitioner failed to include the authors of the Internet articles, as well as the date of the article for item 19 and submitted only partial translations for items 19 – 20. In addition, the petitioner failed to submit any documentary evidence demonstrating that any of the websites are professional or major trade publications or other major media.

Regarding items 22 – 25, they merely reflect press releases and announcements for the television series, *Gabriel*. In fact, items 23 – 25 are the same announcements but just posted on different websites. While these items mention the petitioner in the television series, as well as several other artists, the articles are not primarily about the petitioner relating to her work. *See generally 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). Nevertheless, the petitioner failed to submit any documentary evidence establishing that www.latinheat.com, www.prnewswire.com, www.mx.f305.mail.yahoo.com, and www.hispanicad.com are professional or major trade publications or other major media.

Finally, regarding item 26, notwithstanding that the petitioner failed to submit any translations for the captions and snippets, the submission of photographs do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring “published material,” and “the title, date, and author of the material,” as well as evidence demonstrating that they were published in professional or major trade publications or other major media.

As evidenced above, the majority of the petitioner’s documentary evidence failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3) requiring full translations and 8 C.F.R. § 204.5(h)(3)(iii) also requiring the necessary translation and the date and author of the material. While the petitioner submitted a few articles 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. 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 original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In the director’s decision, he found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

[T]he Applicant has been recognized specifically due to her significant contributions to the field. It is argued that the major national award granted the Applicant from the government of Guatemala is indeed awarded to her for her “contributions of major significance to the field.” This is confirmed by the Director when he accurately quotes the Consular General of Guatemala’s letter confirmed [REDACTED] . . . was given an award by the Vice President in recognition of her significant contributions to the arts in Latin America, and for

her sustained television career, as well as lending her name and talents to charitable causes in the country. She is one of the most successful Guatemalan actresses in soap operas in Latin America and has brought great honor to our country.”

It is argued that the award granted to her from the [REDACTED], similarly recognizes her career achievements and significant contributions to the arts in Mexico. As noted, the letter from [REDACTED] on behalf of [REDACTED] states the award is given for her “valuable contributions to culture and entertainment” that has “had a positive impact on the country” of Mexico.

Regarding counsel’s arguments on appeal regarding the petitioner’s awards, they have already been considered under the regulation at 8 C.F.R. § 204.5(h)(3)(i). We will not presume that evidence relating to or even meeting the awards 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original artistic-related “contributions of major significance in the field.”

A review of the record of proceeding reflects that the petitioner also claimed eligibility for this criterion based on three letters. We cite representative examples here:

[REDACTED]
[REDACTED] stated:

[A] number of actions have been carried out with the goal of motivating the solidarity of the Guatemalan people. As a result, [REDACTED] has been performed in October 2008. It has counted on the support of national and international artists and has collected food for the poorest communities of the country.

During this event, [the petitioner] collaborated as a host, motivating the Guatemalan public and the Latin-American people to participate to our efforts.

[REDACTED] failed to indicate how the petitioner’s hosting and motivating constitute an original contribution “of major significance to the field” of acting. We are not persuaded that the petitioner’s participation at [REDACTED] falls within the field of acting. Regardless, [REDACTED] failed to indicate how the petitioner’s hosting and motivating influenced or impacted the [REDACTED] let alone the field as a whole.

An illegible name from [REDACTED], stated:

CEPEDE is an educational center founded in 2000 for the development of special needs children. We work with children suffering from down syndrome, cerebral palsy, autism, and other learning disorders and conditions

[W]e wish to confirm [the petitioner] has been a visiting theater professor for our children over the last few years. She has held class on improvisational techniques, collaborated on various special courses for expression and arts, and hosted our final presentations in "Festivals" organized to present the children's performances. [The petitioner's] contribution to our organization have [sic] been invaluable. With her incredible skills as an actress as well as her special abilities to deal with children with special needs, [the petitioner] has been able not only to teach her acting skills but also help the children improve their lives in general.

Similar to the letter from [REDACTED] the letter from [REDACTED] merely indicates that the petitioner held classes, collaborated on special courses, and hosted the final presentation without demonstrating that the petitioner has made original contributions of major significance to the field. While the petitioner's involvement with [REDACTED] is admirable, we are not persuaded that such involvement falls within her field of acting. Nonetheless, the letter only discusses the petitioner's contributions as they related to [REDACTED] and not to the field as a whole.

[REDACTED] stated:

We wish also to highlight that individuals like [the petitioner] make an enormous contribution to the Latin American television since their shows and productions become a tremendous product or exportation. [REDACTED]

[REDACTED] were exported to all Latin America, United States, and Europe obtaining significant recognition in those countries and commercial profit in the countries they were produced. These facts indicate that [the petitioner] has reached the top of her field of endeavor and that she has become one of the most acclaimed soap opera actresses in the Hispanic entertainment businesses.

While [REDACTED] generally claimed that the petitioner's shows and productions contributed to Latin American television based on the exportation to all of Latin America, United States, and Europe, the lack of specific information fails to establish eligibility for this criterion. While the petitioner's performances in shows and productions may be considered an original contribution, the letter fails to establish that her participation reflects original contributions of major significance to the field. We are not persuaded that merely performing on a television show or in a production demonstrates eligibility without documentary evidence showing that her work has been influential to the field as a whole.

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.⁵ 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 she meets this criterion.

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.

The director found that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

Almost every article in the media, including many feature articles, magazine covers, and other evidence mention her popularity based on her acting successes for many years, and her work (acting) being on display at events, showcases, in media, and in the press. These articles mention her appearances to promote her shows, charitable appearance as a celebrity, interviews, and other events.

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." The petitioner is an

⁵ *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); *Ayyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

actress. When she acts before a television audience or appears in a magazine, she is not displaying her acting in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing her work, she is not displaying her work. She is certainly not displaying her work in interviews, promotional shows, or charitable appearances as counsel argues. In addition, to the extent that the petitioner is a performing artist, it is inherent to her occupation to perform. Not every performance is an artistic exhibition designed to showcase the performer's art. If we were to accept that a performance artist like the petitioner meets this criterion, it would render the regulatory requirement that the petitioner meet at least three criteria meaningless as this criterion would effectively be collapsed into the criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. This interpretation has been upheld by at least one district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 8-9. (finding that the AAO did not abuse its discretion in finding that a performance artist should not be considered under the display criterion). While we acknowledge that a district court's decision is not binding, the court's reasoning indicates that the AAO's interpretation of the regulation is reasonable.

Therefore, while the petitioner's performances have evidentiary value for other criteria, they cannot serve to meet this criterion. Instead, as the petitioner's performances are far more relevant to the aforementioned "leading or critical role" criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and the "commercial successes in the performing arts" criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(x), they will be discussed separately within the context of those criteria.

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

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

In the director's decision, he 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)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 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 numerous recommendation letters claiming that the petitioner performed in leading or critical roles for various entertainment and media companies. We cite representative examples here:

stated:

I am in the position to confirm the standing of Guatemalan actress [the petitioner] in the telenovela industry in Mexico, and because our programs are broadcast and

popular around the world, her international standing. [The petitioner's] first leading role with Televisa was in the soap opera [redacted] in 2003. Not only was [the petitioner] a key contributor to the success of this production for Televisa, but she personally gained instant fame and notoriety with the public beyond the show.

[The petitioner] has played lead roles in [redacted] most popular and best selling telenovelas and shows ever since. Most recently, she played the lead character of [redacted] in 2008. Her other lead roles in [redacted] top rated programs included [redacted] in [redacted] and [redacted] [redacted] [The petitioner] has also hosted in 2005 a particularly successful news program of [redacted] [redacted] and has played special feature roles in [redacted] [redacted] [redacted].” Her talents and character contributed greatly to the success of these telenovelas and programs.

While the petitioner submitted sufficient documentary evidence on appeal establishing the distinguished reputation of [redacted] the letter from [redacted] is not persuasive evidence demonstrating that the petitioner has performed in a leading or critical role for [redacted] as a whole. Although [redacted] indicated that the petitioner has “played lead roles” for several soap operas, the petitioner’s roles are restricted to the soap operas and fail to demonstrate a leading or critical role for [redacted] as a whole. Pursuant to the article submitted by the petitioner from www.businessweek.com, when compared to [redacted], the [redacted] the petitioner’s role with [redacted] falls far short in establishing that it is leading or critical.

[redacted] stated:

I wish to attest with this letter the artistic qualities and extraordinary talents of [the petitioner], who was employed at this company for a period of 4 years as a presenter and host for different television programs, including ‘[redacted] Guatemala’ (Traveling in Guatemala) and [redacted] (Our People), segments which were broadcast for two and a half years in different time clots [sic] and television channels in Guatemala.

The petitioner failed to submit any documentary evidence establishing that [redacted] Producciones has a distinguished reputation. Nevertheless, [redacted] failed to provide sufficient information reflecting that the petitioner’s roles as a presenter and host equates to a leading or critical role.

[redacted] stated:

[The petitioner] has been one of the most recognized and successful actresses and hosts we have ever represented. [The petitioner’s] classification as a foreigner of exceptional and extraordinary recognition in the television industry, and

especially as an actress and host, is based on her national and international reputation among the Spanish-speaking audience for shows such as [REDACTED] Guatemala,” which she has excellently hosted, and successful Mexican soap operas such as [REDACTED] [REDACTED] in all of which she has played a number of prominent characters. [The petitioner] has been represented by [REDACTED] since her arrival in Mexico City, providing advertisement and contributing to the growth of this Agency.

While [REDACTED] refers to several soap operas in which the petitioner has performed, the letter fails to reflect that [REDACTED] Corporation was directly involved with the soap operas. As such, the petitioner failed to establish that she has performed in a leading or critical role for [REDACTED] Corporation. Moreover, the petitioner submitted screenshots from www.scoutingcorp.es.tl/ without any English language translations and a partial translation of a letter from [REDACTED] Corporation that lists the services provided by it. Notwithstanding that the petitioner failed to submit translations pursuant to the regulation at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(viii), the petitioner failed to submit independent, objective evidence demonstrating the distinguished reputation of Scouting Corporation.

[REDACTED] stated:

I coordinate the principal advertising events in Guatemala, and have had several times the pleasure to coordinate television programs in which [the petitioner] has starred and performed. Besides hosting many of my most important company's events, [the petitioner] has also starred in different other important productions in Guatemala and, in the latest years, Mexico, where she has become one of the stars of one of the most important Hispano-American television networks, [REDACTED]. Particularly at [REDACTED] she has starred in a number of very successful soap operas in South America, such as [REDACTED]. [REDACTED] Only an actress with such an immense talent and recognition as [the petitioner] could have achieved to have worked with the best producers, the best productions, and the best television networks in multiple countries and for an extended period of time.

Similar to the letter from [REDACTED] only indicated that she coordinated television programs in which the petitioner starred and performed. The letter fails to reflect that the petitioner performed in a leading or critical role for [REDACTED] let alone the various soap operas listed by [REDACTED]. Furthermore, the petitioner submitted a partial translation of screenshots from www.jbproducciones.com that merely reflect that it “is a production company of special events.” Again, without objective, independent evidence, the petitioner failed to demonstrate that [REDACTED] has a distinguished reputation.

[REDACTED] stated:

I met [the petitioner] in 2003, when she starred in the successful soap opera [redacted] playing the lead character role of [redacted] [The petitioner] established herself as an actress not only with this soap opera but also with several other productions such as [redacted] [The petitioner] has presented in Guatemala in different journalistic shows such as [redacted] and entertainment segments on local news programs such as [redacted].

The letter from [redacted] fails to indicate that the petitioner has ever performed in a role for [redacted] let alone a leading or critical role. While the letter lists some of the soap operas involving the petitioner, the record remains absent that [redacted] was involved with any of the soap operas.

[redacted], stated:

[The petitioner] has played lead roles in several Latin American productions in the last years, such as [redacted] and has been vitally important for their ultimate commercial success and recognition. Production companies in Latin America now [sic] her name sells. I can confirm that because [the petitioner] is particularly loved by the Latin American public and is already considered by the media a “soap opera” celebrity [she is] able to attract large audiences which ultimately follow the programs she participates.

While [redacted] indicated that [redacted] represents the petitioner, he failed to establish that the petitioner’s performances in several productions demonstrate a leading or critical role for [redacted]. In other words, [redacted] failed to establish that the petitioner’s roles on soap operas equates to a leading or critical role for [redacted] Corporation. Moreover, the petitioner failed to submit any documentary evidence reflecting that [redacted] Corporation has a distinguished reputation.

[redacted], stated:

In 2008, I played the lead role of [redacted] in the multi-million television series titled [redacted] the first high-definition miniseries ever produced in the United States for Spanish-language audiences. . . . The role of Gabriel was played by no one less than [redacted] Grammy award-nominated singer and ALMA award-nominated actor extremely recognized in South America and internationally. . . . [The petitioner] played the character of [redacted] an extremely relevant role in the production. [redacted] in fact, is [redacted] antagonist; she flirts with [redacted] and unsuccessfully tries to make him fall in love for her and “steal” him from [redacted]. I wish to highlight that [redacted] producers insisted from the beginning in choosing only the very best actors and actresses available in Latin America to be part of the

cast. [REDACTED] gathered an extraordinary group of acclaimed actors, with amazing careers in the telenovela's industry in their home countries and abroad.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) specifically requires "organizations or establishments." As such, the television series, [REDACTED] does not qualify as an organization or establishment. Nevertheless, based on the letter from [REDACTED] we are not persuaded that the petitioner performed in a leading or critical role for [REDACTED] when compared to the role of [REDACTED]. Again, while the petitioner submitted screenshots from www.imdb.com regarding [REDACTED] it remains that she is not an organization or an establishment, and therefore does not equate as an organization or establishment with a distinguished reputation.

[REDACTED] stated:

I can confirm the exceptional and unique talent that [the petitioner] has shown through the years as both an actress and hostess in different Hispanic American productions where we have crossed paths on a number of occasions. We participated in many successful productions of the most prestigious and renowned company television in [REDACTED], to which all aspiring entertainers want to belong because of its professional and successful work in broadcast in more than 80 countries around the world. [The petitioner] is one of the most respected and renowned actresses and hostesses in Guatemala for her multiple features in nationwide television productions, including [REDACTED] [REDACTED], and soap operas such as [REDACTED] [REDACTED] and many others. The above productions have been all incredibly successful in Guatemala and all South America and no one can question this success has been due to the exceptional performances of extraordinary actors such as [the petitioner].

Similarly, [REDACTED] fails to indicate the petitioner's leading or critical role for an organization or establishment. We are not persuaded that soap operas meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requiring "organizations or establishments." Even if we recognized soap operas as organizations or establishments, which we do not, [REDACTED] failed to establish that the petitioner performed in a leading or critical role but generally indicated that she was "featured" in television productions. Again, while the petitioner submitted a non-translated resume of [REDACTED] as well as screenshots from www.imdb.com reflecting her involvement in approximately five projects, we are not persuaded that the documentary evidence demonstrates an organization or establishment with a distinguished reputation.

An illegible name from [REDACTED] stated:

[The petitioner] has been the [REDACTED] and we have been so extremely pleased with her performances; that in 2000, we awarded her with the special recognition [REDACTED] [The petitioner's] iconic beauty and grace has communicated the quality of our products.

The letter from [REDACTED] is insufficient to establish that the petitioner has performed in a leading or critical role. The mere indication that the petitioner has been the [REDACTED] without any other documentary evidence, fails to demonstrate the petitioner's role with [REDACTED] is leading or critical. Moreover, the petitioner submitted a non-translated article entitled, [REDACTED] [REDACTED] and screenshots from [REDACTED]. However, without independent, objective evidence, the petitioner failed to demonstrate that [REDACTED] has a distinguished reputation.

While the letters briefly describe the petitioner's work, the documentation, however, does not establish that her positions were leading or critical to these organizations as a whole. In fact, the letters fail to indicate that any of the petitioner's positions were leading or critical; rather they describe routine job duties that one would expect from an actress and generally assert that her role was leading or critical. Moreover, the letters of recommendations are general and broad in nature when describing the petitioner's specific roles and responsibilities. Further, with the exception of Televisa, the petitioner failed to establish that the organizations or establishments have a distinguished reputation.

In addition, as previously indicated USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony, it is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. at 795.

Furthermore, the petitioner submitted Individual Employment Contracts reflecting the following acting jobs:

1. For a term of one week [REDACTED] commencing on July 18, 2005;
2. For a term of one week [REDACTED] commencing on December 2, 2003;
3. For a term of one program for [REDACTED] commencing on September 14, 2004;
4. For a term of one program for [REDACTED] commencing on April 10, 2002;
5. For a term of one program for [REDACTED] commencing on June 27, 2003; and
6. For a term of two programs for [REDACTED] commencing in May 2004.

Again, 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.” The employment contracts do not demonstrate that the petitioner has performed in a leading or critical role; rather they reflect that the petitioner was contracted to perform as an actress in several productions. We are not persuaded that documentary evidence that merely reflects that the petitioner was requested to perform the routine duties of an actress for a television show equates to a leading or critical role.

In this case, the documentation submitted by the petitioner does not establish that she was responsible for the success or standing to a degree consistent with the meaning of “leading or critical role” pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). While the petitioner performed her routine duties, the record falls far short in establishing that the roles were leading or critical, and the organization or establishments have a distinguished reputation.

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

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

The director found that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted numerous screenshots from www.imdb.com for several television series such as [REDACTED]

On appeal, counsel states:

It is argued that ratings are no different than box office receipts in measuring commercial success. That is the standard by which the industry operates. The petition included evidence of each of her major shows, her lead roles, the top ratings of each show, and letters of reference that corroborated the link between her lead roles and contributions to the success and popularity of those shows for the studio. Also, the new evidence attached, the article in Business Week attached herein further confirms the importance of these popular shows for the production companies like [REDACTED] when it states “as the world’s premier producer of top-rated Spanish-language programming, [REDACTED] can deliver Hispanic eyeballs to TV sets at a time when marketers are clamoring for that audience’s fast-growing economic clout.” This article demonstrates it is the success and ratings of the top rated shows starring the Applicant that drives the entire industry.

We are not persuaded by the arguments of counsel. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires “[e]vidence of commercial successes in the performing arts, as shown by *box office receipts* or record, cassette, compact disk, or video *sales* (emphasis added).”

The screenshots from www.imdb.com, as well as the article from www.businessweek.com that refers to [REDACTED] “highly rated soap operas and variety shows, fail to reflect evidence of “box office receipts” or “sales.” Instead, as argued by counsel, the screenshots contain an overview of the productions, including a “User Rating.” However, a “User Rating” does not equate to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) of “box office receipts” or “sales.” We note that even if the petitioner established that user ratings associated with box office receipts or sales, which she did not, we are not persuaded that the user ratings demonstrate commercial successes. For example, [REDACTED] were awaiting five votes to garner a rating. Moreover, [REDACTED] had a user rating of 8.2 but only had eight votes. We also cannot ignore, as indicated in the discussion of the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), that the petitioner only performed in a few episodes for the entire television series. As such, the petitioner failed to establish that the ratings attribute to the episodes in which she actually performed.

As there is no evidence showing the petitioner’s box office receipts or sales, the petitioner failed to establish eligibility for the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x).

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

B. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim “shall” include evidence of a one-time achievement or evidence of at least three of the following regulation categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. We further acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) provides “[i]f the above standards do not readily apply to the [petitioner’s] occupation, the petitioner may submit comparable evidence to establish the [petitioner’s] eligibility.” It is clear from the use of the word “shall” in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

While the petitioner claimed eligibility for comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) at the time of the filing of the petition, counsel failed to address this issue on appeal. Nonetheless, the regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation as an actress cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, counsel mentions evidence in his brief that specifically addresses six of the ten criteria at 8 C.F.R. § 204.5(h)(3). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner’s occupation. Moreover, although the petitioner failed to claim these

additional criteria, we find that an actress could judge the work of others pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and that an actress could command a high salary pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Counsel provided no documentation as to why these provisions of the regulation would not be appropriate to the profession of an actress.

While counsel previously claimed the petitioner's eligibility based on recommendation and reference letters, we have already discussed the letters as they pertained to the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

C. 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 has garnered some attention from her performances as an actress. 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." Evidence of the petitioner's nationally or internationally recognized prizes or awards must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(i), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with

the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). While the petitioner failed to establish that she received more than one nationally or internationally recognized award, her receipt of one award approximately eight months prior to the filing of the petition is insufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Moreover, the petitioner failed to establish that the award for the [REDACTED] [REDACTED] for 2008” from the [REDACTED] is indicative that she “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). While we acknowledge that the award is nationally recognized for excellence based on the fact that it was issued from the [REDACTED], there is no indication that the petitioner faced significant competition from throughout her field. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁶ Likewise, it does not follow that an actress like the petitioner who received an award from the government of Guatemala should necessarily qualify for an extraordinary ability employment-based immigrant visa without documentary evidence reflecting the awards criteria and competition faced. 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.”

We also 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,

⁶ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

30704 (July 5, 1991). In this case, the record of proceeding reflects partial translations. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the date and author of the published material pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Although the petitioner submitted some published material about the petitioner relating to her work, she failed to demonstrate that the material was published in professional or major trade publications or other major media. In addition, the petitioner claimed eligibility for membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) without submitting documentary evidence establishing that ANDA and ANDI require outstanding achievements of their members, as judged by recognized national or international experts. Moreover, the petitioner claimed eligibility for the commercial success criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x) without offering any evidence of the regulatory requirement of box office receipts or sales. 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).

While the petitioner also failed to establish eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), it is noted that her claimed eligibility for the criteria was based mainly on recommendation and reference letters. However, such letters cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). 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.

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). In fact, the majority of the evidence submitted by the petitioner reflects events occurring less than a year from the filing of the petition. For example, the documentary evidence submitted by the petitioner for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) occurred in 2008 and 2009. Moreover, the petitioner claimed eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) based on awards received in 2008.

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. O-1 Nonimmigrant Admission

We note that the petitioner indicated on her petition that she was last admitted to the United States on June 16, 2009, as an O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that “[t]he term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines extraordinary ability as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability. Further, we do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record.

It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the

contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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).

V. 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.

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.