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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 25 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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on August 11, 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

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

I. Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 1119.

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

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

II. Analysis

A. Evidentiary Criteria

This petition, filed on April 28, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an urban developer. 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.

At the time of the original filing of the petition, the petitioner failed to claim eligibility for this criterion. However, in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel claimed the petitioner's eligibility for this criterion and argued:

The selection of [redacted] as an event venue and the national and international acclaim of [redacted] as a venue in and of itself equates to awards by the prestigious and world recognized organizations in charge of such events, like [redacted]. The use of [the petitioner's] projects as an example by the City of Miami, the County of Miami-Dade, and the US Conference of Mayors further reemphasizes the acclaim that [the petitioner's] work enjoys.

In the director's decision, he found:

The record does not contain any independent evidence to substantiate the alien's claim of international or national awards. The award must go to the alien rather than to an organization or group of individuals with which the alien is affiliated. It cannot be found that this element is satisfied.

On appeal, counsel failed to contest the decision of the director or offer additional arguments. Accordingly, we deem this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir.2005). Nevertheless, we note that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor [emphasis added]." Counsel's argument in response to the director's request for additional evidence is not persuasive as the mere selection to hold events at places the petitioner rehabilitated or revitalized does not equate to the petitioner's receipt of nationally or internationally recognized prizes or awards for excellence. Moreover, while we generally agree with the director's findings that an "award must go to the alien rather than to an organization or group of individuals," we note that the record of proceeding fails to contain any awards or prizes that were won by organizations or groups of individuals affiliated with the petitioner.

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

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

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

In the director's decision, he found:

Documentation submitted for this element included evidence of press releases, web promotion, and other media coverage of events being held in the rehabilitated and revitalized Miami area. Clearly this is not the same as published material written about the merits of an individual's work, the individual's standing in the field or the impact his work has had on the field.

On appeal, counsel argued:

The publications provided in the petition and the RFE response noted specific publications in professional and major governmental media specifically relating to the alien's work. The work was performed by the alien, and the alien is clearly the owner of the entities used for purposes of limitations on liability.

* * *

All of these sources discussed and identified [the petitioner's] work in brownfield redevelopment and urban blight renewal. The mere fact that [the petitioner] did not and does not seek publicity by name does not change the fact that [the petitioner's] work specifically has been lauded by local and national governmental organizations, and in international news media. Taking the view of the examiner, if [the petitioner] were mentioned by name in connection with these same publications, then this requirement would have been met. However, we believe the purpose of the criteria is to provide an objective method of demonstrating some form of recognition of the alien. Such recognition of the alien need not state the alien's name if the alien's specific work is recognized. The act of recognizing the work at all is the recognition of the alien as having notoriety in his abilities. Otherwise, the award of an Oscar to a movie for Best Picture would mean that the director of such movie or the actors in the movie do not have extraordinary ability or acclaim – but rather only the movie itself.

Likewise, if the publications presented were short works or articles that focused only on the petitioner's work, such publications would be *primarily* or *solely* about the petitioner. However, inclusion of numerous individuals and projects appears to give the examiner pause. This would be akin to saying that a magazine

such as Architectural Digest, that highlights the work of numerous architects, would not be sufficient to be *primarily* about one of the highlighted architects.

We are not persuaded by counsel's arguments. 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." The burden is on the petitioner to establish every element of this criterion. 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

A review of the record of proceeding reflects that the petitioner submitted voluminous amounts of documentation for this criterion. However, the petitioner failed to submit any documentation reflecting any published material about him regarding his work. Instead, the petitioner submitted documentation that merely mentioned a venue or an event that took place at a location revitalized or rehabilitated by 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).

The vast majority of these documents consisted of press releases, Internet blogs and promotions, "email blasts," official event websites, event programs, and announcements or advertisements for fashion and art events. The petitioner failed to establish that these promotional materials equate to professional or major trade publications or other major media. Moreover, almost all of the documents were about [REDACTED] and etc. The petitioner's field is in urban development and not art and fashion. Therefore, the documentation fails to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring that the published material "relat[e] to the alien's work in the field for which classification is sought." We cite some representative examples:

1. An article entitled, [REDACTED] April 30, 2007, by [REDACTED]. The article mentioned that [REDACTED] took place "at the [REDACTED] in Miami's new [REDACTED] Fashion District." The article failed to even mention the petitioner and did not discuss the petitioner's work; rather the article was about Miami Fashion Week;

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.

2. An article entitled, [REDACTED] March 12, 2007, by [REDACTED] [REDACTED] The article was about [REDACTED] being selected as [REDACTED] and not about the petitioner. In fact, the article did not even mention or discuss the location of the event or refer to anything about the petitioner's work; and
3. A screenshot entitled, [REDACTED] December 1, 2007, by [REDACTED] posted on www.online.wsj.com. The article was not about the petitioner relating to his work but about [REDACTED] Miami Beach. The petitioner was not mentioned in the article, nor did the article discuss the petitioner's work.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that such evidence shall include "any necessary translation." In addition, 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.

The record of proceeding reflects that the petitioner submitted a significant amount of documentation 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.

The petitioner also submitted a few documents regarding [REDACTED] from the [REDACTED] and [REDACTED]. While the documentation provides some background information about brownfields, they are not published material about the petitioner regarding his work. In fact, only one document entitled, [REDACTED] from [REDACTED] mentioned the petitioner in one sentence stating that "[t]he remainder of the property has been sold to British developers [the petitioner] and [REDACTED] who plan to turn the property into a live-work artists' colony." The document is about [REDACTED] as a whole and not about the petitioner and his work. Further, the petitioner failed to establish that any of the documents were published in professional or major trade publications or other major media.

We note here that 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." Almost all of the documents submitted by the petitioner failed to contain the title, date, and/or author of the material. As noted above, even though a few documents contained all of those elements, the documents were not published material about the petitioner relating to his work.

In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the material be published in “in professional or major trade publications or other major media.” At the time of the original filing of the petition and in response to the director’s request for additional evidence, counsel also claimed that features of the fashion shows on television stations such as [REDACTED] and [REDACTED] and a radio station, [REDACTED] reflected the petitioner’s eligibility for this criterion. Notwithstanding the fact that counsel failed to submit any documentary evidence supporting his assertions⁴ and the claimed reporting was on fashion shows and not about the petitioner relating to his work, the plain language of the regulation clearly reflects “[p]ublished material.” As such, the coverage on radio and television stations does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Finally, we note that the petitioner submitted numerous screenshots of material that was posted on the Internet. However, we are not persuaded that postings on the Internet, as well as postings 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.”

As evidenced above, the petitioner failed to establish that there has been published material about him regarding his work in the field of urban development in professional or major trade publications or other major media pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The submission of documentation reflecting media coverage and promotion of fashion shows and art festivals, which took place at locations that the petitioner revitalized, does not meet the plain language of the regulation.

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

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

At the time of the original filing of the petition, counsel claimed the petitioner’s eligibility for this criterion by stating:

⁴ 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).

As an expert in the rehabilitation and renovation of blighted urban real estate, [the petitioner] has continuously served as a judge of the work of other professionals who have participated in the conceiving, designing, negotiating, and building of urban real estate rehabilitation projects. Teams of the most talented professionals available including architects, developers, attorneys, CPA's, marketing experts and real estate brokers.

Counsel failed to submit or refer to any documentation 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. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

In response to the director's request for additional evidence, counsel did not address this criterion in his written response, nor did counsel submit any documentary evidence regarding this criterion. In the director's decision, he found that the petitioner failed to submit any documentary evidence and failed to establish eligibility for this criterion. On appeal, counsel failed to contest the decision of the director or offer additional arguments. Therefore, we deem this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n.2.

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

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion by stating:

[The petitioner's] redevelopment vision for the [redacted] and the historic [redacted] community in Miami's urban core, which has helped pave the way for rapid community development, the growth of a major arts district, and renewed investment in the communities by national business after decades of abandonment, are contributions of major significance.

Counsel failed to submit or refer to any documentation supporting his assertions. In response to the director's request for additional documentation, counsel claimed:

[The petitioner] has been the first to successfully rehabilitate a brownfield site in Florida under the U.S. Environmental Protection Agency requirements, and is one of the pioneers in the field of brownfield rehabilitation, being the first to successfully rehabilitate a toxic site in the state of Florida under the US Environmental Protection Agency's program. It is his work that has served as a blueprint for others, and has inspired others to do the same.

In support of counsel's claims, he submitted the following documentation:

1. A document entitled, [REDACTED] in the City of Miami";
2. A letter from [REDACTED] Florida State Representative, District 107; and
3. A letter from [REDACTED] Director of the Office of Film & Entertainment for Miami-Dade County.

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

The original petition included numerous photos and descriptions of revitalization projects completed by [the petitioner] on behalf of celebrities and governmental entities, including a historical World War II hospital facility. Accordingly, we are unclear as to why the examiner states that evidence of rehabilitation and revitalization of urban areas other than Miami, Florida is missing. . . . [T]he brownfield project that [the petitioner] has completed is of statewide and national importance – not local to Miami alone. It is for this reason that the project is highlighted as the first [REDACTED] guidelines completed in **Florida**, not just Miami. Likewise, [the petitioner's] work is included in the report of the US Conference of Mayors, also stated above in connection with the publications. If [the petitioner's] work and original contributions were solely of local significance to Miami, then there would have been no reason or justification to highlight such work in a publication submitted to 1201 mayors across the entire United States. Finally, the supporting letters provided from local and state officials, and international developers, indicate the original contributions of [the petitioner] in the field.

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 contributions “of major significance in the field.” A review of the documentary evidence submitted by the petitioner, as well as additional recommendation letters that were not specifically submitted for this criterion, reflects that the petitioner has made original contributions. Specifically, the petitioner has established that he has successfully rehabilitated and developed [REDACTED] areas in the Miami-Dade County and surrounding areas. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not merely require the petitioner to establish original contributions but requires those original contributions to be “of major significance to the field.” In this case, the petitioner failed to demonstrate that his redevelopment of properties in the Miami-Dade County and surrounding

areas are of major significance to the field as a whole and not limited to the selected areas in which the petitioner has rehabilitated.

We note that at the time of the original filing of the petition, counsel claimed that the petitioner “rehabilitated numerous historic and other properties in England and other areas in the world.” Moreover, counsel claimed that the petitioner worked on “projects for numerous high profile individuals and celebrities” such as [REDACTED] and [REDACTED]. In support of counsel’s claims, he submitted several photographs claiming that they represented the works of the petitioner. We are not persuaded that the submission of photographs demonstrates the work of the petitioner without the submission of primary evidence. Notwithstanding, we are further not persuaded that simply restoring the homes of “high profile individuals and celebrities” demonstrates that the petitioner’s work has been of major significance to the field.

Regarding item 1, the document reflects some brownfield success stories in Miami. While the document highlighted some brownfield projects in the [REDACTED] area, the petitioner failed to identify if any of the success projects were completed by the petitioner, so as to establish original contributions made by the petitioner. Regardless, the document fails to indicate that the petitioner’s work has been of major significance to the field and not restricted to the Miami area.

Regarding item 2, Representative [REDACTED] stated:

[The petitioner], through his projects such as [REDACTED], has made significant and important original contribution to urban rehabilitation. Being the first to successfully emerge from navigating the US Environmental Protection Agency’s [U.S. EPA] brownfield program in Florida and with his revitalization and rehabilitation of other projects recognized as toxic sites by the EPA and urban blight locations, [the petitioner] has created the footprint for other inexperienced parties to begin to rehabilitate and revitalize such areas. He is a (successful) example to all others who would attempt to accomplish what he, with his extraordinary abilities, was the first to do in Florida.

Although [REDACTED] indicated that the petitioner was the first person to successfully navigate the U.S. EPA’s brownfield program in Florida, he failed to demonstrate how this achievement is of major significance to the field as a whole and not limited to the State of Florida. Furthermore, while [REDACTED] stated that the petitioner “created the footprint for other inexperienced parties to begin to rehabilitate,” he failed to identify any parties or individuals who have rehabilitated or revitalized brownfield areas based on the petitioner’s contributions.

Regarding item 3, [REDACTED] stated:

Prior to [the petitioner’s] projects in Miami, no other developer had been able to engage in a significant level of [REDACTED]. It is through [the petitioner] creating and providing a blueprint through his original and major work

in Miami that others have followed him, many failing to achieve what [the petitioner] has been capable of achieving. He is [redacted] as the first to successfully emerge from [redacted] program in Florida. This is a major original contribution by [the petitioner] to the field, and one that has been studied and emulated subsequently.

Similar to the letter from [redacted] failed to demonstrate how the petitioner's successful completion of the [redacted] in Florida is an original contribution of major significance to the field of urban development. In other words, [redacted] failed to establish that the petitioner's accomplishment has impacted or influenced the field as a whole and not limited to the projects in Miami and Florida. Likewise, while [redacted] indicated that the petitioner provided a blueprint "that others have followed him," [redacted] failed to identify the blueprint and the others who have followed the petitioner's work.

A review of the record of proceeding reflects that the petitioner also submitted letters from [redacted] of Miami; [redacted] of Miami; [redacted] and [redacted] of Miami; [redacted] of [redacted] and [redacted]. All of the letters highly praise the petitioner for his work in renovating neighborhoods in the southern Florida area. For example, [redacted] stated:

[The petitioner's] [redacted] project was conducted in tandem with the [redacted] redevelopment program, which focused on cleanup of brownfield real estate. The [redacted] is one of the true successes in the inner city area of downtown Miami. The building had been abandoned to drug dealers and other criminals. [The petitioner] has converted the property into a chic venue and is today used as the major downtown Miami venue by [redacted] the largest art show in the world.

The [redacted] Studios exemplifies the tremendous community and economic benefits brought about by [the petitioner's] [redacted] in Miami. [The petitioner], with his partner and using his own money, has purchased distressed properties in areas where it has been difficult to obtain financing.

Again, we acknowledge that the petitioner has made original contributions to Miami and the surrounding areas in revitalizing and regenerating distressed neighborhoods and properties as evidenced by the above referenced letters. However, the petitioner failed to establish, and the letters fail to reflect, that his original contributions have been of major significance to his field. For example, the petitioner failed to demonstrate that his contributions in the Miami area have influenced or impacted the field of urban development as a whole. We note here, as indicated in counsel's brief, that the petitioner submitted a document entitled [redacted] in February 2000. While the report briefly mentioned the [redacted] the report also contained numerous project updates from various cities in the United States. Furthermore, the report was issued in 2000 and appears to have been issued before the [redacted] was completed or even substantially started.

The report described the project in terms of potential benefits such as “[t]o redevelop the area would increase the jobs and spur urban in fill” and encountered problems such as “[a]nother obstacle has been the local and federal back taxes and the accrued liens on the properties.”

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 unusually influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

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

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

The director found that the petitioner established eligibility for this criterion. We agree with the findings of the director. 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.” A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing eligibility for the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, we agree with the decision of the director for this criterion.

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

Accordingly, the petitioner established that he meets the plain language of the regulation for this criterion.

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

In the director's decision, he found that the petitioner failed to establish eligibility for this criterion. Specifically, the director found:

[T]he counsel of record indicates that it is impossible to compare remuneration with respect to developers in the [REDACTED]. However, the record contains no documentary evidence of the petitioner's earnings from his endeavors, nor that his financial gain from those endeavors place him at the very top of his field. Neither has documentation of the earnings of other developers been offered for comparison.

On appeal, counsel argues:

[R]emuneration particularly with respect to developers and in the field of [REDACTED] is impossible to compare. First, there are very few parties even capable of and willing to engage [REDACTED] and urban blight revitalization. The parties that are in this field are private individuals and companies that do not publish their incomes or profits so as not to make competitors aware of their profit margins. Publicly traded real estate companies do not engage in this extremely complex field of real estate development, and so statistics are not available from public filings as to those publicly held companies. In addition to these issues with comparing remuneration, the goal of rehabilitators and developers is to receive remuneration upon the resale or refinance of the property. They are not paid salaries or compensation in the traditional sense. To the contrary, they are incentivized by the US tax system to hold onto their properties for lengthy periods of time for capital gains treatment, or to engage in 1031 like-kind exchanges for other properties allowing them to leverage whatever appreciated value their properties may have. Thus, the only way to evaluate remuneration would be to examine how much [the petitioner] paid for a property, and the market value of that property were he to sell it or refinance it and take cash out today.

Counsel failed to submit any documentary evidence supporting his assertions regarding the remuneration of developers in general and developers who engage in developments like the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added].” Therefore, we are not persuaded by counsel’s argument that “the only way to evaluate remuneration would be to examine how much [the petitioner] paid for a property, and the market value of that property were he to sell it or refinance it and take cash out today.” Instead, the petitioner must demonstrate that he has commanded a “significantly high remuneration for services, in relation to others in the field.” Therefore, counsel failed to establish property values equate to remuneration of services.

Notwithstanding the above, the petitioner submitted a document for the “Second Quarter Fiscal Year 2007 Business Plan” for companies under the management of [REDACTED] for which the petitioner is the manager, reflecting the value of the various properties. We note that the petitioner failed to submit independent, objective evidence supporting the value of the properties in the business plan. Nevertheless, the documentary evidence fails to establish that the petitioner has commanded a significantly high remuneration for services as the petitioner failed to submit any documentary evidence comparing his remuneration to others in the field. Merely submitting documentation of the value of various properties is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) without evidence comparing the petitioner’s remuneration for services to others in the field so as to establish that the petitioner’s remuneration is significantly high.

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

B. Comparable Evidence

On appeal, counsel claims that the petitioner is eligible for consideration for comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) because “the particular industry and occupation of [REDACTED] and urban blight revitalization are not particularly prone to fitting within the evidentiary categories of 8 CFR 204.5(h)(3).”

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 his occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 urban developer 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 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 this additional criterion, we find that an urban developer could be a member of an association requiring outstanding achievements pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Counsel provided no documentation as to why these provisions of the regulation would not be appropriate to the profession of an urban developer.

While the petitioner submitted several letters of recommendation, we considered those letters in our discussion of the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v). 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.

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 established eligibility for one of the criteria, of 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 enjoyed some business success in redeveloping distressed properties in the Miami area. Furthermore, the petitioner has garnered some personal praise from the local politicians and members of the community. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The

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

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

In this case, the petitioner initially claimed eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) without submitting any evidence of prizes or awards, let alone nationally or internationally recognized prizes or awards for excellence.

Moreover, the petitioner claimed eligibility for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) based on material that was not about the petitioner relating to his work; rather the material was about fashion shows and art festivals. In addition, the petitioner failed to submit certified translations for any of the foreign language documents. Further, the petitioner failed to comply with the basic regulatory requirements such as providing the title, date, and author of the material.

Also, the petitioner claimed eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) without submitting any documentary evidence. Furthermore, the petitioner claimed eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) without demonstrating that his contributions have been of major significance to the field. We note that the self-serving letters of recommendation praising the petitioner cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795.

Finally, the petitioner claimed eligibility for the significantly high remuneration criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix) without offering any evidence comparing the petitioner's remuneration for services to others in his field. We also note that counsel made various assertions of the petitioner's eligibility without providing any supporting documentation.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 189 n.6 (1984). We are not persuaded that such evidence with the numerous deficiencies noted equate to "extensive documentation" and is demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989).

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

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

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

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

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

ORDER: The appeal is dismissed.