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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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DATE: JUL 01 2011 Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also questioned whether the petitioner sought to continue working in his area of expertise.

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

On appeal, counsel submits a statement and resubmits previously submitted evidence. For the reasons discussed below, while the record establishes the petitioner’s current employment, the AAO concurs with the director that the petitioner has not established his sustained national or international acclaim. The AAO will address below counsel’s assertions regarding the director’s approach to evaluating the evidence.

On the petition, the petitioner responded “no” to Part 4, question 6 which asks whether any immigrant visa petition has ever been filed by or on behalf of the petitioner. The petition also advises that if the answer is “yes,” the petitioner must provide the case number, office location, date of decision and disposition of the decision on a separate sheet of paper. The petitioner did not submit an attachment with this information. Instead, counsel included the ambiguous statement in his cover letter: “The initial request was denied as a result of lack of evidence.” Counsel did not include a case number, office location or date of decision.

While there is no prohibition regarding the number of extraordinary ability petitions an alien may choose to file, neither the alien nor his attorney of record is permitted to deliberately conceal the existence of prior filings in response to the specific questions at Part 4 of an I-140 petition, or to decline to provide U.S. Citizenship and Immigration Services (USCIS) with specific requested information regarding all prior filings. The Form I-140 petition “shall be executed and filed in accordance with the instructions on the form.” 8 C.F.R. § 103.2(a)(1). As counsel has represented the petitioner in his prior Form I-140 filing, it is unclear why counsel signed the instant petition to indicate that the information on the form was “based on all information of which I have knowledge.” The existence of prior

petitions and the information contained within those petitions may be material to a new adjudication. *See, e.g.*, 8 C.F.R. § 103.2(b)(15) (withdrawal or denial of a petition due to abandonment shall not itself affect a new proceeding; however, the facts and circumstances surrounding the prior petition shall otherwise be material to the new petition). The AAO notes that willfully misleading, misinforming or deceiving any person concerning any material and relevant matter relating to a case may be a basis for disciplinary sanctions under 8 C.F.R. § 1003.102(c). In addition, such actions may constitute frivolous behavior. *See* 8 C.F.R. § 1003.102(j). The AAO strongly discourages this behavior.

## I. Law

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

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

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

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

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

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's 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, internationally 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns

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

about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

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

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

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. Despite the fact that the director cited *Kazarian*, on appeal, counsel asserts that there is “no authority” for applying the second step, the final merits determination. Instead, counsel asserts that the regulations mandate that an alien who submits evidence that falls under three of the criteria has met his burden.

The final merits discussion in the *Kazarian* majority opinion is a necessary corollary to the majority’s discussion of how USCIS should consider evidence under the regulatory criteria. More specifically, the court’s conclusion that USCIS cannot raise certain concerns when conducting the “antecedent procedural” step of counting the evidence is predicated on the understanding that USCIS can do so at a later stage. *Id.* at 1121. To apply only half of the court’s procedure would effectively negate our ability to consider the quality of the evidence at any stage. Such an outcome is untenable and would undermine the statutory standard of national or international acclaim. Notably, the *Kazarian* court cited *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) for the proposition that the classification is extremely restrictive. *Kazarian*, 596 F.3d at 1120.

For the reasons discussed above, the AAO considers the final merits determination step discussed in *Kazarian* not only persuasive but necessary to understanding the court’s decision as a whole. Significantly, a recent federal court decision has acknowledged that the *Kazarian* court described a two-step procedure. *Rijal v. USCIS*, 2011 WL 22067 (W.D. Wash. Feb. 22, 2011). That court stated:

Although USCIS erred in some of its conclusions as to [REDACTED] showing on the threshold evidentiary criteria, it is apparent that it made those errors with an eye toward the ultimate merits determination. In each instance, USCIS sought evidence that demonstrated sustained acclaim. There is no threshold requirement that the evidence demonstrate that acclaim, but ultimately, USCIS must determine whether the evidence demonstrates “sustained national or international acclaim.”

*Id.* at \*6. While only a district court decision, the AAO finds persuasive that a federal court looking at this issue after *Kazarian* concurs with the AAO’s conclusion that the two-step process is a fundamental holding of *Kazarian*.

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 8 C.F.R. § 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO’s *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria<sup>2</sup>

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

The petitioner submitted a 2003 letter from [REDACTED] [REDACTED] Planning Committee, advising the petitioner that he was selected as one of six finalists for the [REDACTED] Competition. The petitioner also submitted a second place trophy for the 2003 from [REDACTED] but the petitioner’s name does not appear on the trophy. An unsigned letter from [REDACTED] [REDACTED] and [REDACTED], advises that the petitioner received a second place [REDACTED] in a national film and video competition that recognizes excellence in the work of college students. An unsigned letter has no evidentiary value. The petitioner also submitted materials from [REDACTED] website stating that the [REDACTED] are limited to college students.

Even assuming that the petitioner won a 2003 [REDACTED] the record contains no evidence that this award, limited to college students, is nationally or internationally recognized within the field of photography.

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

[REDACTED] an [REDACTED] at New York University (NYU), asserts that the petitioner received the following awards: (1) the [REDACTED] in 1998 and (2) awards at the [REDACTED] for best photo essay, best slide portfolio, and in the mixed media category in 1998. These awards are not in the record. Moreover, [REDACTED] does not assert that these prizes are nationally or internationally recognized.

The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. [REDACTED] letter is not notarized and does not constitute an affidavit. Moreover, he does not claim first hand knowledge of these awards. Regardless, affidavits from individuals with direct personal knowledge are only permissible in lieu of primary evidence where the petitioner demonstrates that both primary and secondary evidence are nonexistent or unavailable. 8 C.F.R. § 103.2(b)(2). The record contains no evidence that the above 1998 awards or secondary evidence of those awards such as media coverage of the selections, are either nonexistent or unavailable.

In summary, the petitioner has not documented his receipt of any awards and has not demonstrated that any of the awards he claims to have won are nationally or internationally recognized. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(i).

*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 submitted evidence that he is a member of the [REDACTED] (SPE). The petitioner did not submit evidence, however, that SPE requires outstanding achievements of its members. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in qualifying associations in the plural, consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.<sup>3</sup>

<sup>3</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

As the petitioner has documented only a single membership and the petitioner has not demonstrated that SPE requires outstanding achievements of its members, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

*Published materials 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 Washington, D.C. asserts that ██████████ covered the petitioner's dual exhibition at that gallery in February 2010 and broadcast the coverage on Indonesian Television. ██████████ and ██████████ for ██████████ – Indonesian Service, confirms that ██████████ aired "a special features story on your exhibition for many of our national and private TV and Radio affiliates in Indonesia" during primetime. The petitioner submitted a DVD of the broadcast, a short piece that is exclusively about the petitioner and his exhibition.

The petitioner submitted an ██████████ and Events press release in the ██████████ promoting the petitioner's exhibition at the ██████████. The petitioner submitted Internet materials characterizing the paper as "the definitive local voice in Washington, D.C." Counsel asserts, however, that the paper is a major media publication because it appears in print and on the Internet.

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. International accessibility by itself is not a realistic indicator of whether a given publication is "major media." The petitioner has not demonstrated that the print distribution of a publication fails to reflect the overall interest in the publication even if also accessible on the Internet. The AAO will not presume that the mere Internet presence of articles from a local newspaper will notably increase the readership of that paper beyond the locality the paper serves.

Regardless, the article is not about the petitioner relating to his work. Rather, it is a promotional article about an exhibit at the ██████████ and only mentions the petitioner as one of five photographers displaying their work.

Thus, the only qualifying media coverage is the single ██████████ broadcast. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published materials in qualifying publications or other major media in the plural. As the petitioner has submitted only a single instance of qualifying coverage, he has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

*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.*

asserts that the petitioner “was a at the for the and the Washington where the petitioner “reviewed the work for a social documentary Photographer.” does not affirm any personal knowledge of this judging experience and the record contains no evidence from the confirming this appointment.

The petitioner submitted a January 24, 2010 letter from the 2010 for SPE, confirming the petitioner’s time slot for reviewing student portfolios at the 2010 in Philadelphia. for CINE, asserts that the petitioner served as a judge for the CINE .

The petitioner has adequately documented his participation as a judge for SPE and the CINE . As such, the petitioner has submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iv).

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

of the University of the District of Columbia, asserts that the petitioner, a professor at that university since 2008, is an instructor of high quality. Effectiveness and dedication as a professor, while commendable, are not contributions of major significance to the field of photography. notes that the petitioner has exhibited his work and “taken on significant commercial clients.” The petitioner’s exhibits will be discussed below under the relevant criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vii). They are not, by themselves, contributions of major significance to the field of photography. Simply demonstrating an ability to work in the field through the retention of significant commercial clients is not a contribution of major significance to the field of photography.

the sole for the 2010 ‘ exhibition in Vermont, asserts that exhibition featured 75 of the more than 1,000 photographs submitted. She further explains that she selected the petitioner’s entry because it was the only one to address the theme with a sequence of four photographs with a cohesive story progression of memory and loss. As stated above, the petitioner’s exhibitions are directly relevant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). Not every exhibition is a contribution of major significance. does not explain how the petitioner’s use of four photographs documenting a cohesive story has influenced the field of photography as a whole.

discusses the petitioner’s contributions to the of the baccalaureate-level photographic concentration program. She then discusses the petitioner’s donations of art to an auction on behalf of the . These statements, however, do not address how the petitioner has influenced the field of photography as a whole at the level of a contribution of major significance.

██████████ states that his letter constitutes “an advisory expert opinion and peer review” of the petitioner. At the end of his letter, he states that there are “no grounds for me to disbelieve the authenticity and accuracy of the credentials presented by” the petitioner. ██████████ does not indicate that he had ever heard of the petitioner prior to being requested to provide a reference letter. ██████████ asserts generally that the petitioner is “among the small percentage of individuals who have risen to the top of their field, and can be considered of extraordinary ability.” Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.<sup>4</sup> More specifically, ██████████ discusses the petitioner’s work for ██████████ and ██████████. Contributing to the syllabus and course instruction at two universities is not a contribution of major significance to the field of photography as a whole. ██████████ does not suggest that other universities nationwide have adopted the petitioner’s syllabus. Insofar as ██████████ discusses other criteria such as judging the work of others and exhibitions pursuant to 8 C.F.R. §§ 204.5(h)(3)(iv) and (vii), this decision will discuss his assertions under those criteria. As there are separate criteria for those accomplishments, the AAO will not presume they rise to the level of contributions of major significance to the field without a persuasive explanation as to how they have demonstrably influenced the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.<sup>5</sup> The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to

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<sup>4</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

<sup>5</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

“fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

The letters considered above primarily contain bare assertions of acclaim without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.<sup>6</sup> The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(v).

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

The petitioner displayed his photographs at the following exhibitions:

1. The juried [REDACTED] exhibit in Middlebury, Vermont in 2010;
2. The 2009 Art for Life auction at the [REDACTED] of Washington in Washington, D.C. benefitting the [REDACTED] to which the petitioner donated his work;
3. The [REDACTED] in Washington, D.C. where the petitioner is a participating [REDACTED], in June, August, October and December 2009 and February 2010.
4. The [REDACTED] at [REDACTED] Headquarters in 2006.

[REDACTED] of the [REDACTED] Film and Photography Festival asserts that the petitioner’s 2007 show “resulted in other works commissioned by the [REDACTED]” The examples she gives, however, are from 2006. [REDACTED] does not explain how a show in 2007 can result in commissions in 2006.

In addition to the evidence of the above exhibits, the petitioner submitted his 2008 photo essay of fashion in [REDACTED] and another photo essay of hot spots in Washington D.C. for the January 2006 issue of [REDACTED] DC. The petitioner is also credited as the photographer for other stories in various issues of that magazine. According to a Reuters article the petitioner submitted,

<sup>6</sup> *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d at 41; *Ayvr Associates, Inc.*, 1997 WL 188942 at \*5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

██████████ is the largest publisher of city magazines. The article does not suggest that each of these city magazines has a significant distribution beyond that city. The petitioner is also credited with a photograph in the February 2009 edition of ██████████. In addition, the petitioner submitted photographs in *The ██████████* but no photographer credits are apparent. Nevertheless, ██████████ for *The ██████████* confirms that the petitioner is a contributor to the magazine. The petitioner is also the credited ██████████ for ██████████ *Family Recipes Around the World*, published by ██████████ where the petitioner is a ██████████. The petitioner is the credited ██████████ of a cupcake photograph in a slide show titled ██████████ with ██████████" on ABC News' website. Magazines are not artistic exhibitions or showcases.

The petitioner also received production credit for one page of the 2009 ██████████ Annual Report. ██████████ for the IFC states that the annual report is "IFC's flagship publication" and that the "IFC's international prestige is reflected in the Annual Report, and conveyed with photography and editorial content of the highest quality." Regardless, an annual report is not an artistic exhibition or showcase.

██████████ confirms that the petitioner produced behind the scenes coverage and photographed the publicity stills for the 2008 film ██████████ ██████████ for ██████████ Entertainment, Inc., thanks the petitioner for photographing the rising of ██████████ tent in Coney Island. ██████████ confirms that she used the photographs for public relations, marketing and historical documentation. The petitioner is also the credited photographer for the ██████████ website and an unsigned letter thanks him for taking photographs for ██████████ catering website. Promotional posters and historical documentation are not artistic exhibitions or showcases.

██████████ at ██████████ asserts that she asked the petitioner to "shoot a key interview" for "██████████ a documentary she co-produced and co-directed. She further asserts that the film was screened on over 70 PBS affiliates and accepted at over 20 film festivals. The petitioner submitted the credits and some materials purporting to list the screenings of the documentary but the source of this information is not apparent. Finally, she asserts that the petitioner's short film, ██████████ was "recognized locally in several film festivals" including the D.C. ██████████ and the ██████████ Awards. A documentary is not an artistic exhibition or showcase.

In a letter dated April 30, 2010, ██████████ in Thailand invited the petitioner to exhibit his work in her gallery in 2011 but the record contains no evidence that he had done so as of the date of filing this petition in July 2010. Similarly, the petitioner was invited to exhibit his work in Vermont at the ██████████ in from August 10 through September 4, 2010, also after the date of filing. The AAO will not consider evidence of exhibitions that postdate the filing of the petition, the date as of which the petitioner must demonstrate his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In summary, the magazines, publicity material and documentary are not artistic exhibitions or showcases. It is also not clear that an auction is an artistic showcase or exhibition. Nevertheless, the exhibitions in Vermont, at the [REDACTED] and for the [REDACTED] and [REDACTED] Festival are qualifying exhibitions.

In light of the above, the petitioner has submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(vii).

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

[REDACTED] asserts that [REDACTED] hired the beneficiary from a pool of 30 applicants based on his experience and presentation and ability to “teach across the border, in all the fields assigned.” [REDACTED] lists the courses the petitioner has taught and asserts that he “instilled many of the initiatives that we, as a department, demand from our professors.” [REDACTED] also discusses the success of the petitioner’s students and concludes that the petitioner’s position “was imperative for the growth of the photography concentration.” Specifically, she explains:

Our school was lacking a strong Commercial Photography Program when [the petitioner] was entrusted with revamping the syllabus. He actually did more than that, he was able to elevate the program to a level of competitiveness with other national schools, and his students were able to produce portfolios at the most professional levels.

In a July 20, 2009 letter, [REDACTED] at [REDACTED], thanks the petitioner for teaching at the university and indicates that his students have ranked him with a score 4.25 out of 5.

[REDACTED] concludes that the petitioner has worked “in a critical and essential capacity for both th [REDACTED] and [REDACTED]” but makes it clear that he reaches this conclusion based on the letter from [REDACTED]. [REDACTED] does not claim any first-hand knowledge of this role and, in fact, it is not clear that he had ever heard of the petitioner prior to being requested to provide a reference letter based on his review of the petitioner’s credentials.

[REDACTED] asserts that while the petitioner was an adjunct professor in spring 2008, the university was impressed with the student response and work produced, resulting in the offer of a tenure-track position. [REDACTED] confirms that the petitioner has stimulated students and provided a creative environment. [REDACTED] does not explain how the petitioner’s role fits in the overall hierarchy of the university or how the petitioner has contributed to the university above and beyond the normal duties of a professor such that his role may be distinguished as “critical.”

The petitioner does not hold a chair or dean position, as shown by an organizational chart demonstrating how those positions fit within the overall hierarchy of the universities where he is working. Thus, the petitioner has not documented a leading role for either [REDACTED] or [REDACTED].

Every position at a university is necessary for the operation of the university in some way or the university would not fill the position. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), mere employment with a distinguished employer is insufficient. Rather, the role must be leading or critical. If every position necessary for the operation of the employer were considered "critical," that term would be meaningless. Instead, the word "critical" requires that the petitioner have provided a service that was demonstrably important to the increased success and distinguished reputation of the employer as a whole.

[REDACTED] does not suggest that the petitioner performed any service beyond those of what [REDACTED] expects of any competent tenure-track [REDACTED]. Thus, the record does not reflect that the petitioner performed a critical role for [REDACTED].

As stated above, [REDACTED] asserts that the petitioner "instilled" the initiatives expected of university faculty and elevated the competitiveness of [REDACTED] commercial photography program. The petitioner may have played a critical role for the photography division, which falls under the [REDACTED] and [REDACTED] which presumably falls under a larger department. That role, however, does not rise to the level of a critical role for [REDACTED] as a whole. The petitioner did not submit evidence that the commercial photography program at [REDACTED] individually enjoys a distinguished reputation. For example, the petitioner did not submit general or trade media rankings of the top commercial photography programs in the United States. The record also lacks general or trade media articles crediting the petitioner with the distinguished reputation of that program.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii).

#### *Summary*

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

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

In accordance with the *Kazarian* opinion, the next step is 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.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

As discussed above, the petitioner did not document the 1998 awards [REDACTED] discusses and the record contains no evidence of their prestige. Even if we assumed that the petitioner won a 2003 [REDACTED] Award, awards where the pool of competitors is limited to students do not compare the competitors with the most experienced and renowned members of the field. Thus, they are not indicative of or consistent with national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

As discussed above, the record contains no evidence that SPE has restrictive membership requirements. The record lacks any other evidence to suggest that SPE membership is indicative of or consistent with national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor.

The article in the [REDACTED] appears in a local publication to promote an exhibition of at least five photographers that appears in the “Arts & Events” section. Such local and promotional coverage is not consistent with national or international acclaim the same way as journalistic coverage in national publications.

The [REDACTED] broadcast focused on the petitioner’s solo exhibition. It included statements from the petitioner, his students, a colleague at [REDACTED] and the exhibit organizer. The petitioner, however, did not provide a certified translation of the foreign language portions of the broadcast. While [REDACTED] filmed the story, the record does not establish the nature of the Indonesian program that included this featured story in its broadcast. This evidence, while notable, is not indicative of national acclaim or status as one of the small percentage at the very top of his field.

While the petitioner submits evidence that he has judged the work of others pursuant to 8 C.F.R. § 204.5(h)(3)(iv), the nature of the judging experience is a relevant consideration in the final merits determination as to whether the evidence is indicative of national or international acclaim. *See Kazarian*, 596 F.3d at 1122. As stated above, the petitioner reviewed student portfolios for SPE. SPE’s newsletter lists 86 reviewers total. The petitioner purchased a membership in SPE and paid a registration fee to attend the conference. Nothing in the record suggests that this participation is indicative of national or international acclaim rather than volunteer services commensurate with an experienced member of the field.

[REDACTED] explains that CINE selects the competition participants through semiannual competitions involving “hundreds of volunteer media and content specialists who judge nearly 1,000 entries yearly in several moving-image genres for professional, independent and student filmmakers.” During the judging phase, juries of film, video, television or content professionals evaluate the approximately 500 films selected using CINE’s judging paperwork. Those films that juries recommend through two stages

receive awards. [REDACTED] explains that CINE recruits jury chairs from around the United States and that these chairs recruit at least two colleagues. According to [REDACTED] in Annapolis, Maryland, recruited the petitioner to serve on "a few of her juries." In response to the director's notice of intent to deny, the petitioner submitted an unsigned letter purportedly from [REDACTED] attesting to the prestige of CINE judges. As the letter is unsigned, it has no evidentiary value.

A national organization, CINE selects the jury chairs. The jury chairs then select their colleagues. Thus, it is apparent that selection as a jury chair is more indicative of national recognition than selection as a member of the panel by the jury chair. Recruitment by [REDACTED] who operates in Annapolis, is not indicative of the petitioner's recognition outside of the Mid-Atlantic region where he works.

In light of the above, the petitioner's participation as a judge is not indicative of or consistent with national or international acclaim or status as one of the small percentage who have risen to the very top of the field of photography.

As discussed above, the petitioner has displayed his work at artistic exhibitions and showcases. Exhibition, however, is an inherent part of working as a visual artist. The simple act of displaying one's work is only indicative of an ability to work in the field rather than national or international acclaim. With the exception of a single exhibition in Vermont, the petitioner's exhibitions as of the date of filing had all been local to the Washington, D.C. area. The petitioner did not document that the Vermont exhibition is a nationally recognized exhibition. A single exhibition outside the petitioner's local area is not indicative of or consistent with national or international acclaim or status as one of the small percentage who have risen to the very top of the field of photography.

The petitioner has secured freelance employment as a commercial photographer, providing photographs, photo essays and promotional material for magazines and other clients. An ability to secure employment is not indicative of or consistent with national or international acclaim. Even assuming some of the clients enjoy a distinguished reputation, the petitioner did not demonstrate that he played a leading or critical role for the organizations or establishments that have hired him.

The petitioner has documented that he has been employed as a [REDACTED]. An ability to secure employment as a [REDACTED], however, is evidence of competence as an instructor. Not every photography [REDACTED] is nationally or internationally acclaimed or is one of the small percentage who have risen to the very top of the field of photography. Notably, demonstrating an offer of a tenure track position does not relieve a petitioning university from submitting documentation of international recognition when seeking to classify the prospective [REDACTED] as an outstanding professor pursuant to section 203(b)(1)(B) of the Act. 8 C.F.R. § 204.5(i)(3)(i), (iii). Similarly, the AAO would not presume that every tenure-track professor enjoys national acclaim.

Finally, in his initial brief, counsel asserted that what was "more telling" than the evidence discussed above "is the testimony of the experts." Counsel then references the letter of [REDACTED]

noting his conclusion that the petitioner "is among the small percentage of individuals who have risen to the top of their field, and can be considered of extraordinary ability in the field of Photography." As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>7</sup> As also discussed above, [REDACTED] does not appear to have ever heard of the petitioner prior to the request to evaluate his credentials in support of the petition.

For the reasons discussed above, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor.

### III. Conclusion

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a photographer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a photographer and a progression of his career, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at \*5.