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



**U.S. Citizenship
and Immigration
Services**



B2

DATE: **MAY 24 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:

SELF-REPRESENTED

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 November 3, 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 in the arts.¹ The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

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

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

I. Law

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

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

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

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

¹ According to Form I-94, Arrival-Departure Record, the petitioner was last admitted to the United States on March 3, 2007, as an F-1 nonimmigrant student.

(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.² 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);

² 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).

see also Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on January 6, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an artist. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).³

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.

In the director's decision, he indicated that the petitioner did not submit any evidence for this criterion. On appeal, the petitioner claims:

I have reviewed my record not to give new evidence but to point out that evidence already sent to Immigration was not properly considered in making a final determination in my case. But some information, like my memberships in arts organizations, I did not send to Immigration, thinking that it was not so important. I am a member of several arts organizations, some of which admit only members who have important achievements in their field. These are the Salmagundi Club, the American Artist Professional League, and the National Arts Club.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In this case, the petitioner failed to submit any documentary evidence supporting her assertions on appeal that she is a member of the Salmagundi Club, the American Artist Professional

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

League, and the National Arts Club. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the petitioner failed to submit any documentary evidence demonstrating that the Salmagundi Club, the American Artist Professional League, and the National Arts Club require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. An important achievement, as claimed by the petitioner, is not necessarily an outstanding achievement, as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Again, the petitioner failed to submit any documentary evidence establishing that an important achievement equates to an outstanding achievement, and it is judged by recognized national or international experts in their disciplines or fields.

For the reasons discussed above, merely claiming memberships in organizations is insufficient to establish eligibility for this criterion without submitting documentary evidence demonstrating that the petitioner is a member of associations in the field that require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

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

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

In the director's decision, he found that the petitioner established eligibility for this criterion because there was "submitted evidence of published material about the alien in a major trade publication." Upon review, the AAO finds the director's decision for this criterion must be withdrawn.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

“[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

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

1. An article entitled, [REDACTED] November/December 2008, [REDACTED]
2. An article entitled, [REDACTED] November/December 2008 – January 2009, unidentified author, *The Art Students League of New York*;
3. A self-authored article entitled, “Luciferous Key in Painting,” 2000, *Art Council*; and
4. A self-authored article entitled, [REDACTED] May/June 2008; *Art Council*.

Regarding item 1, a review of the article reflects that it is published material about the petitioner relating to her work. However, the petitioner failed to submit any documentary evidence establishing that *Gallery&Studio* is a professional or major trade publication or other media.

Regarding item 2, the petitioner failed to include the author of the article. Furthermore, the article is about [REDACTED] and not about the petitioner relating to her work. In fact, the only mention of the petitioner is in a caption to a photograph that simply indicated that the petitioner was a student of [REDACTED]. Clearly, the article is not published material about the petitioner relating to her work. Moreover, the petitioner failed to submit any documentary evidence demonstrating that *The Art Students League of New York* is a professional or major trade publication or other major media.

Regarding items 3 and 4, articles authored by the petitioner are not articles about the petitioner relating to her work pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Thus, while her self-authored articles are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner’s original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).⁵ Finally, the petitioner failed to submit any documentary evidence establishing that *Art Council* is a professional or major trade publication or other major media.

⁵ The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” As the petitioner did not claim eligibility for this criterion, and it is not apparent that the petitioner’s self-authored articles are scholarly and were published in professional or major trade publications or other major media, they will not be considered under the scholarly articles criterion.

As discussed above, the petitioner only submitted one article, item 1, that was published material about her relating to her work. Even if the petitioner were to submit supporting documentary evidence showing that *Gallery&Studio* is a professional or major trade publication or other major media, which she did not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires material about the petitioner in more than one professional or major publication. 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.⁶

As the petitioner failed to submit published material about her relating to her work in professional or major trade publications or other major media, the petitioner failed to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the AAO withdraws the findings of the director for this criterion.

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

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

The director found that the petitioner failed to establish eligibility for this criterion. On appeal, the petitioner argues she “submitted numerous letters from well-known artists, established experts in their fields, some with up to 50 years of experience and others listed in who’s who in America and who’s who in American Art.”

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

A review of the recommendation letters submitted on behalf of the petitioner reflect that although the authors praise the petitioner’s talents as an artist, they fail to indicate any original

⁶ 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).

contributions made by the petitioner, let alone original contributions of major significance in the field. For example:

1. [REDACTED] stated that “[a]s a person with great natural talent, [the petitioner] has an unusual vision; she can extract from the simplest scenes something deep and significant”;
2. [REDACTED] stated that “[w]e consider her to be an artist of the first rank, with extraordinary abilities” and “[w]e believe she has great *promise* [emphasis added]”;
3. [REDACTED] stated that the petitioner “is obviously talented and motivated” and “is an artist of exceptional talent and ability which *will* certainly contribute to the national interest of the United States [emphasis added]”;
4. [REDACTED] stated that the petitioner “is a talented and highly motivated artist with many talents in painting, printmaking and sculpture” and that he is “confident that she has a great deal to contribute to the form”;
5. [REDACTED] stated that the petitioner “has exceptional talent . . . someday she *could* become a good teacher/instructor of art, thereby benefiting many young people [emphasis added]”;
6. [REDACTED] stated that “[b]ut it is not just her talent and aptitude that sets [the beneficiary] apart; it is also the strong appeal of her work that makes a case for her standing as a person of exceptional talent”;
7. [REDACTED] stated that the petitioner “is a talented, creative artist who has been working and exhibiting in the United States for many years” and is “an artist of exceptional ability and *will* contribute to the national interest of the United States [emphasis added]”;
8. [REDACTED] stated that he “like[s] the way that she goes after technical information and uses it to work things out on her own” and that the petitioner “*will* make significant contributions both to the cultural community and to our country [emphasis added]”;
9. [REDACTED] stated that she taught the petitioner in the class, Watercolor: Experimental Techniques, from 2001 to 2007 and that the petitioner “is a talented artist”;

10. [REDACTED] stated that the petitioner “shows exceptionally ability and talent” and was “extremely impressed with her undaunted efforts to achieve such excellence in a variety of mediums”;
11. [REDACTED] stated that she found the petitioner’s work “personally inspiring” and “express the unique blend of strength and intuition that she brings to all her work”;
12. [REDACTED] stated that the petitioner “projects her unique vision of the world with extraordinary sensitivity and great technical skill” and “will make important contributions to the art of this country [emphasis added]”; and
13. [REDACTED] stated that he has “become very fond of [the petitioner’s] works” and that he “believe[s] that [the petitioner] is a true artist, who works with sensitivity, purity of the mind and heart.”

Again, 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.” It is clear from the recommendation letters that the authors are personally impressed with the petitioner’s work and her talents as an artist. However, the petitioner failed to submit a single letter that identified or indicated an original contribution made by the petitioner to the field. Moreover, none of the letters indicated how the petitioner’s skills or personal talents are original contributions of major significance to the field. Merely having a diverse skill set or being highly regarded for talent is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998).

In addition, some of the reference letters briefly mention the petitioner’s artistic exhibitions both in the United States and abroad. However, the regulations contain a separate criterion regarding the display of the petitioner’s work at artistic exhibitions and showcases pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The AAO will not presume that evidence relating to or even meeting the display criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner’s exhibitions will not be considered under this criterion, the display criterion will be addressed later. The AAO notes that none of the letters indicate that the petitioner’s exhibitions have impacted or influenced the field, so as to demonstrate original contributions of major significance in the field. As the petitioner is an artist, she is expected to display her work at exhibitions. However, there is no evidence demonstrating that the petitioner’s exhibitions have significantly influenced the field.

Furthermore, as emphasized above, the petitioner submitted several recommendation letters that indicated the petitioner's possible contributions to the field, such as "she has great promise," "she could become a good teacher/instructor," and "will contribute to the national interest of the United States." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's work has not already been of major significance in the field. Rather, the petitioner's references appear to speculate about how the petitioner's work may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss the future promise of the petitioner's work and the impact that may result from her work, rather than how her past work qualifies as a contribution of major significance in the field. The assertion that the petitioner will likely contribute is not adequate to establish that she has made original contributions of major significance in the field. While the authors of the letters praise the petitioner for her talents, the fact remains that any possible and measurable impact that results from the petitioner's artwork will likely occur in the future.

While those familiar with the petitioner's work generally describe it as "extraordinary," "exceptional," and "impressive," the letters contain general statements that lack specific details to demonstrate that the petitioner has made original contributions of major significance in the field. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner has made original contributions and how those original contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁷ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when

⁷ *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.).

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.

As indicated under the AAO's discussion of the published material criterion, the petitioner submitted documentary evidence reflecting that she authored two articles for *Art Council*. However, the petitioner failed to submit any documentary evidence establishing the influence or impact of the articles on the field, such as evidence reflecting extensive citation by others in their work, so as to demonstrate that the articles are original contributions of major significance in the field. The petitioner failed to establish how the articles have significantly contributed to her field as a whole.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) not only requires the petitioner to demonstrate original contributions, but the petitioner must demonstrate that the original contributions have been of major significance in the field. The AAO 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, the AAO cannot conclude that she meets this criterion.

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

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

In the director's decision, he concluded that the petitioner failed to establish her eligibility for this criterion because the documentary evidence failed to reflect that her exhibitions "conveyed the necessary national or international acclaim." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." In accordance with *Kazarian* 596 F.3d at 1122, the petitioner's national or international acclaim is not relevant to meeting the plain language of this criterion. Instead, the petitioner must submit evidence establishing that her work has been displayed at artistic exhibitions or showcases. In this case, the petitioner submitted sufficient documentary evidence reflecting that her work was displayed at artistic exhibitions or showcases. Therefore, the AAO withdraws the decision of the director for this criterion.

Accordingly, the petitioner established that she 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.

The director found that the petitioner failed to establish eligibility for this criterion. Specifically, the director stated:

[T]he petitioner has submitted copies of the alien's receipt book as evidence that the alien's work has been sold; however, this information is not an appropriate basis for comparison. Upon request for additional evidence, the petitioner submitted a letter from [REDACTED] Art Dealer, stating that the petitioner sold a total of \$78,000 during her exhibition "New works. Painting and Sculpture" in Russia; however, no formal documentation was submitted to attest to these claims. The Gallery MD-ART submitted a list of the painting from this exhibition with a column showing which paintings were sold and for how much; however in the list of painting, no clear documentation confirmed that all the paintings at the exhibit were from the petitioner.

On appeal, the petitioner argues that she "think[s] that this evidence must be to refer to 8CFR204.5(h)(3)(x): Commercial Success – sold out show."

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

1. A document entitled, "New works. Painting and sculpture," from Gallery-MD Art reflecting a price listings for 63 paintings and 25 sculptures from February 2 – March 2, 2009. In addition, the document reflects that 21 paintings and four sculptures were sold;⁸
2. A letter from [REDACTED] Art Dealer, who stated "[a] lot of her works have been sold during the show ["New works. Painting and sculpture"] (total amount \$78,000)" and he "personally sold several paintings of her from January to September (total amount \$15,000)"; and
3. 24 sales receipts that failed to reflect the seller and, with the exception of a few receipts, failed to reflect the buyer.

At the outset, the petitioner never specifically claimed eligibility for this criterion at the time of the original filing of the petition or in response to the director's notice of intent to deny. Based on a review of the documentary evidence, the director determined that the petitioner's documentation related to this criterion. 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." As the documentation submitted by the petitioner reflects the purported sales of the petitioner's artwork

⁸ The original document is in the Russian language, and the translation did not convert the price listing amount into the U.S. Dollar (USD). The document reflects that the price listings for the pieces of the petitioner's artwork that sold were 2,142,000 Russian Rubles. According to <http://www.xe.com>, accessed on May 17, 2011, and incorporated into the record of proceeding, the currency exchange rate on March 1, 2009 was 0.0279411559 Russian Rubles per USD. Therefore, the price listings on the document indicate that the petitioner's artwork sold for approximately \$59,850.

and relates to the petitioner's remuneration for service, the AAO concurs with the director's determination that this evidence be considered under this criterion rather than the commercial successes criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the *performing arts*, as shown by *box office receipts* or record, cassette, compact disk, or video *sales* (emphasis added)." As the petitioner is not a performing artist, and the petitioner did not submit evidence of box office receipts or record, cassette, compact disk, or video sales, the petitioner does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x).

Regarding item 1, the document is on letterhead from Gallery MD-Art but is not signed by a representative of the gallery attesting to the accuracy and authenticity of the information. Regarding item 2, while [REDACTED] claimed that the petitioner sold her artwork for \$78,000 at [REDACTED] failed to indicate how he was aware of such sales. Regarding item 3, the sales receipts do not reflect the name of the petitioner or provide any other identifying indicators to demonstrate that they pertain to the petitioner and her artwork.

Regardless, 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]." The petitioner failed to submit any documentary evidence comparing her sales of the artwork in relation to others in the field, so as to establish that she has commanded other significantly high remuneration for services. Merely submitting evidence of the sales of the petitioner's artwork is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) without documentary evidence comparing the petitioner's sales of the petitioner's artwork to others in the field. The petitioner offers no basis for comparison showing that her remuneration for services was significantly high in relation to others in her field.

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO 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 that she met the plain language of regulation for one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the final merits determination, the AAO 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 demonstrated that she had a single article published about her and her work, that she is

a talented artist as reflected by the recommendation letters, and that she has displayed her work at some exhibitions. However, the personal accomplishments of the petitioner fall far short of establishing that she “is one of that small percentage who have risen to the very top of the field of endeavor” and that she “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The petitioner’s evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the 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).

Although the AAO found that the petitioner did not meet the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner only submitted a single article about her and her work. Moreover, even if the petitioner established that *Gallery&Studio* was published in a professional or major trade publication or other major media, which she did not, the single article published approximately one month prior to the filing of the petition is not sufficient to demonstrate the sustained national or international acclaim required for this highly restrictive classification.

While the AAO found that the petitioner did not meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based her eligibility on recommendation letters that praised her skills but spoke of his future potential and speculated about her future contributions. 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 from individuals supporting the petition 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 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Again, none of the letters submitted on behalf of the petitioner reflected any original contributions of major significance made by her.

Even though the AAO found that the petitioner met the display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), it is expected that an artist in sculpture and painting, such as the petitioner, would have her work displayed at exhibitions and showcases. However, the record contains no evidence to show, for instance, the reputation of the galleries that exhibited the petitioner’s work or that the petitioner’s exhibitions garnered any attention in a manner consistent with sustained national or international acclaim. For example, the petitioner

failed to submit any documentary evidence reflecting that the petitioner's exhibitions were at highly regarded venues or that they brought any critical acclaim or drew record crowds. The AAO is not persuaded that the mere exhibition of the petitioner's work is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Finally, the AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). In this case, the petitioner claimed eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) without submitting any documentary evidence establishing that she is a member of any association, let alone memberships in associations requiring outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, the petitioner claimed eligibility for the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix) without submitting any documentary evidence comparing the sales of her artwork to others in the field. The AAO is not persuaded that the absence of such evidence equates to "extensive documentation" and is demonstrative of this highly restrictive classification.

In this matter, the evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as an artist. The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, 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. 8 C.F.R. § 204.5(h)(2).

The AAO notes that the petitioner's references' credentials are far more impressive. For example, [REDACTED] stated:

I have exhibited at the Metropolitan Museum, National Gallery of Art, Smithsonian Institution and Muzeums [sic] abroad in France, Great Britain, Italy, Japan, China, Mexico, [and] Australia. My paintings are in the permanent collections of the Palace of the Legion of Honor, S.F., Frye Museum, WA, Museo de las Acuarella, Mexico, D.F., Portland Museum, ME., Environmental Protection Agency and many more. I also spent 10 years as a U.S. Coast Guard Artist and was commissioned by the National Gallery in 1963 to cover the Apollo II Moon Landing for NASA.

When compared to the accomplishments of [REDACTED], the petitioner's submission of a job offer letter from A to Z Daycare Center and After School Program teaching children ages 2 to 6 is not

demonstrative of an individual at the very top of the field of endeavor and is far below the achievements of her references. While the petitioner need not demonstrate that there is no one more accomplished than she to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level she has attained. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that her achievements at the time of filing the petition were commensurate with sustained national or international acclaim as an artist, or that she was among that small percentage at the very top of the field of endeavor.

III. Conclusion

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

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

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

ORDER: The appeal is dismissed.