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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: OCT 18 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:

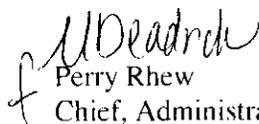


**INSTRUCTIONS:**

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.

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, the petitioner submits a brief with supporting documentation. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

## **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, 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.<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 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. 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).

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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).

## 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 director determined the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion. The petitioner submits articles from a local paper and a local web site as evidence he received a [REDACTED] in the Best World Program Short Film category from the Jackson Hole Film Festival. This is a biennial conference in its fourth year. However, the petitioner provides no evidence of award's scope indicating if this award enjoys national or international recognition. The petitioner also provides no evidence of the award's selection criteria he received at the conference, which would indicate if the Jackson Hole Film Festival bases their award selection on excellence in the field of endeavor. According to the organization's web site, the Best Program Short award contains the following description, "Awarded to the program, between 3 and 20 minutes in length, that best advances an appreciation or understanding of the natural world. (Entry Fee in U.S. Dollars: \$90)."<sup>3</sup> The conditions or standards to receive this award are not based on excellence in the field of endeavor. Additionally, the fee is not an entry fee; rather it was required in order to be considered for the award. This substantially diminishes the prospects that the award is based on excellence. This award will not serve to contribute to the petitioner meeting this criterion.

The petitioner also asserts that the 2007 Newport Beach Film Festival awarded him the Outstanding Achievement in Filmmaking Short Film award for [REDACTED]. The evidence provided is a photocopy of what appears to be a postcard indicating the award. The petitioner provides no other documents or media articles that might serve as evidence that he actually won the award. Additionally, the petitioner provides no evidence of the scope of the award indicating if this award enjoys national or international recognition. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

*Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to*

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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], [accessed on October 17, 2011, a copy of which is incorporated into the record of proceeding.]

the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. Secondary evidence might be newspaper reports of the competition results. Affidavits attesting to awards, therefore, would need to "overcome the unavailability of both primary and secondary evidence." The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the evidence is presumed ineligible for consideration pursuant to 8 C.F.R. § 103.2(b)(2). Consequently, the AAO cannot consider the petitioner to have met his burden of proof for this alleged award to be considered under this criterion.

The petitioner submits evidence of an award for [REDACTED] from the 2007 Dam Short Film Festival in Boulder, Colorado. The record contains no evidence to indicate the scope of the award indicating if this award enjoys national or international recognition. The petitioner has not established how a festival in its third year of existence issues nationally or internationally recognized prizes with any media coverage outside of the local area. In an attempt to bolster the festival's importance the petitioner submits the printout of a web page related to the festival from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>4</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). The petitioner also provides no evidence of the selection criteria for the award he received at the festival, which would indicate if the Dam Short Film Festival bases their award selection on excellence in the field of endeavor. The organization's web site indicates award winners are selected through a vote from the audience.<sup>5</sup> This award will not serve to contribute to the petitioner meeting this criterion.

The final award the petitioner submits for this criterion consists of an [REDACTED] from the 2007 Palm Springs International Festival of Short Films. This award meets the plain language requirements of the criterion that the award be nationally or internationally recognized and awarded for excellence in the field of endeavor.

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<sup>4</sup> Online content from *Wikipedia* is subject to the following general disclaimer: "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields." See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), [accessed on October 17, 2011, a copy of which is incorporated into the record of proceeding.]

<sup>5</sup> [REDACTED] accessed on October 17, 2011, a copy of which is incorporated into the record of proceeding.]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of “awards” or “prizes” in the plural, which is 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. *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). Under this criterion the petitioner only presents one qualifying award. Accordingly, the AAO will withdraw the director’s determination related to this regulatory criterion as the petitioner has not submitted qualifying evidence that meets the plain language requirements of 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.*

The petitioner submits four Japanese-language articles from the following: [REDACTED], an online magazine; [REDACTED] an online newspaper, [REDACTED] an online magazine; and a portion of an article from [REDACTED], a daily newspaper. The director determined the petitioner did not meet the requirements of this criterion. Each piece of evidence is accompanied by a certified translation into the English language performed by [REDACTED]. None of the translation certifications are an original document with the translator’s original signature; all submitted certifications are a photocopy of the original certification document. It appears the translator only filled out and signed one certification form. The title of the published material on each accompanying certification form appears to have been altered after the translator signed the form. These discrepancies, in addition to other deficiencies in the translations, negatively affect their reliability. The AAO therefore, will assign less weight to this evidence.

The plain language of the regulation requires evidence submitted under this criterion to include, not only the title of the published material, but also the date and the author. As the evidence submitted is in the Japanese-language, the translation of the evidence also must contain the date and the author. The regulation at 8 C.F.R. § 103.2(b)(3) requires that, “Any document containing foreign language submitted to USCIS shall be accompanied by a *full* English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English” (emphasis added). As a result, summary translations are not considered sufficient to meet the requirements of the regulation. The petitioner submits translations of the evidence under this criterion that lacks both the date of the published

material and the author's name. Consequently, this evidence may not be considered as qualifying evidence under this criterion.

Additionally, there appear to be translation errors. The petitioner submitted the article from [REDACTED] with his initial filing which the translator indicates is from [REDACTED]. However, in response to the director's request for evidence (RFE) the petitioner submitted the same Japanese-language document that he provided with the initial filing, which the translator indicates is from [REDACTED] a Japanese-language newspaper. This calls into question the reliability of the translation. The document translating the article from [REDACTED] states the evidence is from an interview with [REDACTED] [sic]. This, coupled with the previously noted errors calls into question the accuracy of each translated document. As this determination by itself is sufficient to find the petitioner does not meet the plain language of the regulation, the AAO will not further discuss the issue of whether the materials were published in major media. The petitioner has failed to establish that he meets this criterion.

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

The director determined the petitioner did not meet the requirements of this criterion. In counsel's brief, she did not contest the director's determination of this issue or offer additional arguments. Therefore, the AAO will consider this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). Accordingly, the petitioner failed to establish he meets the requirements of this criterion.

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

The petitioner submits evidence of the short film, [REDACTED] being shown at six film festivals. The petitioner wrote, produced, and directed [REDACTED]. The director determined the petitioner meets the requirements of this criterion. We concur that the petitioner meets the plain language of this criterion.

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

The petitioner relies on his role in creating the short film, [REDACTED]. In the initial filing brief counsel claims that without the petitioner, this short film would not exist. Counsel also contends that based on [REDACTED] being "short-listed" for an Academy Award (top 10 finisher for the year), the movie itself has a distinguished reputation and the fact that the petitioner wrote, produced, and directed the film, is evidence of the petitioner's leading or critical role under this criterion. In response to an RFE, the petitioner submits several letters from members of the film and entertainment industry. The director determined the petitioner did not meet the requirements of this criterion.

The petitioner submits a letter from [REDACTED] on, a film production and distribution company that employed the petitioner as a Literary Editor. It is in this role as Literary Editor that [REDACTED] claims the petitioner played a critical role for his company. [REDACTED] identifies the petitioner's duties as a Literary Editor and subsequently claims the petitioner was critical to the success of several projects, but falls short of providing probative information that specifically addresses how the petitioner's role was critical for each of the named projects.

Counsel asserts the letter from [REDACTED] represents [REDACTED]. The letter is not on company letterhead, is a photocopy of the original, and bears no company web site. [REDACTED] claims to be a television producer and identifies a film he and the petitioner recently worked on together ([REDACTED]), but fails to specifically discuss how the petitioner played a leading or critical role for his company. Counsel asserts that due to the petitioner's work with [REDACTED] that *Yokai* won a grant from the Japanese government. The record does not contain evidence of this grant or that the grant issuance was related to the petitioner's work. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also provides a letter from [REDACTED] who identifies himself as a movie producer for [REDACTED]. [REDACTED] praises the petitioner's abilities as a filmmaker in his letter, however he does not state how the petitioner played a leading or critical role for his organization.

The petitioner provides a letter from [REDACTED]. This letter states this company and the petitioner are in negotiations to make the petitioner's short film [REDACTED] into a feature length film. The petitioner's eligibility may not be established by a possible future achievement. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner provides no evidence of playing a leading or critical role for any organizations or establishments as required by the regulation. His claim to have played a critical and leading role in the creation of a short film does not meet the plain language of the regulation that this leading or critical role be performed for specific organizations or establishments. Additionally, none of the letters the petitioner provides establish he has played a leading or critical role for the organizations named in the letters. The petitioner provides insufficient evidence to establish any of the above named organizations enjoy a distinguished reputation. As a result, the petitioner failed to establish that he meets 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.*

Initially, counsel presented statistics from the Bureau of Labor Statistics related to producers and directors. Counsel subsequently presents assertions of future compensation for future work. On appeal, the petitioner also submits a document titled "[REDACTED] for [REDACTED]". This document is in reference to the petitioner working for [REDACTED] on a project that "will start on or about April 2010 and end on or about April 2011." The priority date on the petition is September 25, 2009, and the petitioner must establish eligibility for the classification by this date. As this evidence is for future, unperformed work, the petitioner may not rely upon this evidence to meet this regulatory criterion.

One letter of intent to compensate the petitioner is from [REDACTED]. This letter states, "[REDACTED] will be paid 15% of the budget, which is \$150,000." The letter also states there is a future project in which the company expects to compensate the petitioner as well. The plain language of the regulation requires that the alien "has commanded" a high salary, in the past tense. This requirement is consistent with the regulations at 8 C.F.R. §§ 103.2(b)(1), (12) which state that a petitioner must establish eligibility at the time of filing. A petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submits no evidence that he commanded a high salary for his services prior to filing the present petition. The petitioner failed to establish that he meets the plain language of this criterion.

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

[REDACTED] of [REDACTED] short movie entertainment company, states her company distributes the petitioner's short film, [REDACTED], through media entities such as [REDACTED] and numerous cable and satellite television channels. This criterion anticipates a petitioner will establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts. These sales and box office receipts are a reflection of the petitioner's commercial success relative to others involved with similar pursuits in the petitioner's field of the performing arts. As a result of the petitioner providing no evidence of sales or box office receipts, the petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion. The petitioner failed to establish that he meets the plain language of this criterion.

#### *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.

While the petitioner’s Audience Favorite Award from the 2007 Palm Springs International Festival of Short Films distinguishes his work from other short film producers and directors, it is limited to the narrower field of short films as opposed to films in general. The petitioner may not show sustained national or international acclaim or status as one of that small percentage who have risen to the very top of their field of endeavor by narrowing his field to only short film producers. The remaining awards submitted lack evidence to indicate if the awards are nationally or internationally recognized, or the criteria used to determine if the awards are issued for excellence as opposed to being awarded for advancing an appreciation or understanding of the natural world as indicated on the Jackson Hole Film Festival’s web site in reference to the petitioner’s [REDACTED]<sup>6</sup> As a result, the petitioner submits only one award that might contribute to meeting the regulatory requirements. This award does not rise to the level of a one-time achievement, namely a major internationally recognized award, and is not indicative of or consistent with sustained 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 stated above, the record contains no evidence that published material about the petitioner exists in professional or major trade publications or other major media, relating to the alien’s work in the field. The translations of the Japanese-language documents fail to meet the requirements of 8 C.F.R. § 103.2(b)(3) in reference to translated evidence. The translations also lack the date and the author required by 8 C.F.R. § 204.5(h)(3)(iii). This evidence is not indicative of or consistent with sustained 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 petitioner’s claimed original artistic contributions of major significance consist of his unique style, as counsel asserts, and being “short-listed” by the Academy of Motion Picture Arts and Sciences for his short film, [REDACTED]. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. The AAO must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). To be considered a contribution of major significance, it can be expected that the petitioner might be able to show how his work has influenced others in his field. Otherwise,

<sup>6</sup> <http://www.jhfestival.org/festival/categories.htm>. [accessed on October 17, 2011, a copy of which is incorporated into the record of proceeding.]

it is difficult to gauge the impact of the petitioner's work. The petitioner also provides several letters from those working in the entertainment industry who provide praises of the petitioner's ability as a film-maker. However, these letters lack the specificity to indicate how the petitioner's work has affected his field. While being short-listed is a noteworthy accomplishment, not every noteworthy accomplishment will serve to establish the petitioner's sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

Display of the petitioner's work in the field at artistic exhibitions or showcases consists of viewings of his short film, [REDACTED], at six film festivals over a two year period, 2006 and 2007. The most notable showing was at the 12<sup>th</sup> iteration of the Palm Springs International Festival of Short Films. The petitioner submits evidence indicating numerous media and accredited industry members attended the conference and the petitioner's work was one of 333 films on display at the festival. The evidence submitted relating to the remaining festivals does not indicate any of the festivals were attended by influential industry members and the media coverage consists of only the local media. The petitioner submitted several descriptions of the festivals, however this evidence originates from *Wikipedia*. As stated above with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. This evidence falls short of representing the petitioner as one who has established sustained acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The petitioner failed to provide any qualifying evidence of his leading or critical role for organizations or establishments. The claim of the petitioner's lead or critical role in creating one short film that is distinguished among other short films is not consistent with the regulatory requirement that the leading or critical role be served in behalf of organizations or establishments. While he also claims roles for other organizations, the petitioner failed to establish the distinguished reputation of these organizations. As such, the evidence is not indicative of sustained national or international acclaim or that the petitioner has attained the status as one of that small percentage who have risen to the very top of their field.

The record lacks evidence to establish that prior to filing the present petition, the petitioner received compensation for his services and that such compensation was high relative to that of others working in his field. The evidence on record is all related to future possible compensation for activities that occurred after the petitioner filed the petition. As previously stated, the petition must have been approvable on the date the petitioner filed. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katighak*, 14 I&N Dec. at 49. None of the qualifying evidence when considered as a whole represents that the petitioner has achieved sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of his field of endeavor.

The evidence on record related to commercial successes in the performing arts consists of a letter from a short movie distributor indicating the different venues to which the company distributes the petitioner's short film, [REDACTED]. The petitioner submits no evidence of box office receipts or sales for

any of his work as a producer and director. The evidence fails to reflect the petitioner has achieved sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of his field of endeavor.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who have risen to the very top of the field of endeavor. The petitioner, a producer and director relies on awards for his work on short films, being short-listed for an Academy Award for one short film, and screenings of his short film at film festivals. The AAO will not narrow the petitioner's field to only producers and directors of short films rather than the more general field of producers and directors. While the petitioner has had some success as a producer it appears that the highest level of the petitioner's field is far above the level he has attained.

### III. Conclusion

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

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

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

**ORDER:** The appeal is dismissed.