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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**

[REDACTED]

B2

DATE: **APR 18 2012**

Office: TEXAS SERVICE CENTER FILE:

[REDACTED]

IN RE:

Petitioner:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, approved the immigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) for review. The record of proceeding does not support approval of the petition. Therefore, the AAO will withdraw the director's decision and the petition will be denied.

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 established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. In accordance with the regulation at 8 C.F.R. § 103.4(a)(2), the petitioner was afforded 30 days in which to submit a brief to the AAO.

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.

Counsel asserts that the petitioner meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iv), (vii), (viii), and (x). For the reasons discussed below, the AAO will withdraw the director's decision and deny the petition.

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

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on January 3, 2011 as an F-1 nonimmigrant student.

(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 an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting 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.* 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*. 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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 18, 2011, seeks to classify the petitioner as an alien with extraordinary ability as a filmmaker. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

The AAO withdraws the director's finding that the petitioner's evidence meets this regulatory criterion. The petitioner submitted a list of 96 "2010 Aloha Accolade Winners" posted on the website of the Honolulu Film Awards indicating that his short film [REDACTED] winners in the [REDACTED] category. According to the internet material submitted by the petitioner, the organizers of the Honolulu Film Awards present awards "in four main competition tiers along with top prizes for Best of Category distinctions and Special Jury Awards." The numerous awards distributed at the Honolulu Film Awards include Film Competition Winners, Gold Kahuna Award Winners, Silver Lei Award Winners, and the lowest tier of Aloha Accolade Award Winners.⁴ The AAO cannot ignore the large number of award recipients at the Honolulu Film Awards and that petitioner's competitive category was limited to "student" filmmakers. Further, the petitioner did not submit evidence of the national or international *recognition* of his particular award. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's award be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's [REDACTED] category is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

In addition to the aforementioned deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "nationally or internationally recognized prizes or awards" in the plural. The use of the plural 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

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

⁴ There were 104 total "2010 Gold Kahuna Winners" including 11 such winners in the "Student Films" category. See <http://honolulufilmawards.com/General/PastWinners/2010GoldKahunaAwardWinners/tabid/403/Default.aspx>, accessed on March 7, 2012, copy incorporated into the record of proceeding. There were 98 total "2010 Silver Lei Winners" including 11 such winners in the "Student Films" category. See <http://honolulufilmawards.com/General/PastWinners/2010SilverLeiAwards/tabid/404/Default.aspx>, accessed on March 7, 2012, copy incorporated into the record of proceeding.

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). Therefore, even if the petitioner were to establish that his Aloha Accolade Award in the “Student Films” category meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the petitioner’s receipt of more than one qualifying prize or award. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

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.

Counsel states: “The petitioner’s work has been showcased on IMDB (Internet Movie Database), the leading website in the field of film and television.” The petitioner submitted his online profile as posted at <http://imdb.com>. Page 2 of the petitioner’s online IMDB profile includes an option entitled “Contribute to This Page” and an “Edit page” button.⁵ Thus, it appears that anyone accessing the IMDB website can contribute to its content. Counsel further states: “[The petitioner] is also featured in IMDBpro which is limited to professionals (actors, directors, producers) in the field.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA

⁵ According to IMDB’s “Conditions of Use,” “Visitors may post reviews, comments, and other content; and submit suggestions, ideas, comments, questions, or other information” See http://www.imdb.com/help/show_article?conditions, accessed on March 7, 2012, copy incorporated into the record of proceeding.

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). There is no evidence demonstrating that IMDBpro “is limited to professionals (actors, directors, producers) in the field.”⁶ Regardless, the posting of the petitioner’s work on the IMDB website and his IMDBpro registration do not constitute “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.”

The petitioner submitted an internet printout indicating that he has been a member of United Filmmakers and Actors (UFA) since February 9, 2011. The record, however, does not include evidence of the membership requirements (such as bylaws or rules of admission) for the UFA showing that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field.

The AAO affirms the director’s finding that the petitioner failed to submit evidence of his 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 the field. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory 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 AAO withdraws the director’s finding that the petitioner’s evidence meets this regulatory criterion. In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁷

The petitioner submitted a [REDACTED] article in which he was interviewed entitled [REDACTED] posted at www.studenti.it. The petitioner also submitted a [REDACTED] posted at www.vimeo.com. The preceding article mentions the petitioner among 15 “promising up-and-

⁶ In fact, anyone accessing the IMDB’s website can register for a “free trial” of IMDBpro simply by providing their name, e-mail address, password, and a valid credit card. See http://www.imdb.com/help/show_article?conditions, accessed on March 7, 2012, copy incorporated into the record of proceeding.

⁷ 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.

coming moviemakers,” but the date and author of the material were not specifically identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regardless, there is no documentary evidence (such as online readership data) showing that the preceding websites qualify as professional or major trade publications or other major media.

The petitioner submitted a single-sentence item in the Turin cinema news section of [REDACTED] entitled [REDACTED] stating (in its entirety): “In the past few days in Turin, the short film [REDACTED] by [the petitioner] and produced by the Association Fabula has been shown in area theaters.” The date and author of the material were not identified as required by the plain language of this regulatory criterion. In response to the director’s notice of intent to deny (NOID), the petitioner submitted information about *La Stampa* from *Wikipedia*, an online encyclopedia, stating: “*La Stampa* is one of the best-known, most influential and most widely sold [citation needed] [sic] Italian daily newspapers.” With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁸ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. There is no reliable circulation evidence showing that *La Stampa* qualifies as a form of major media.

The petitioner submitted a May 18, 2004 nine-sentence article about him in [REDACTED] entitled [REDACTED] but the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted a January 15, 2005 article in [REDACTED] entitled [REDACTED] but the article was unaccompanied by a full English language translation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. Moreover, the article is not about the petitioner as it appears to only briefly mention him in a single sentence. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008)

⁸ 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, accessed on March 8, 2012, copy incorporated into the record of proceeding.

(upholding a finding that articles about a show are not about the actor). Regardless, there is no circulation evidence showing that *Torino Cronaca* qualifies as a form of major media.

The petitioner submitted what appears to be an incomplete [REDACTED] [REDACTED] entitled [REDACTED]. The initial part of the article was not submitted and the petitioner is mentioned in only a single paragraph of the multi-paragraph article. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” Further, the author of the material was not identified as required by the plain language of this regulatory criterion. Moreover, there is no circulation evidence showing that *Journal of Moncaliere* qualifies as a professional or major trade publication or some other form of major media.

The petitioner’s response to the director’s NOID included an August 3, 2011 online article posted at www.almamagazine.com entitled [REDACTED].” The article includes an interview of the petitioner and three others, but it was unaccompanied by a *full* English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted non-translated Spanish language online material printed from the almamagazine.com homepage and the *Wikipedia* entry for *ALMA Magazine*. As previously discussed, there are no assurances about the reliability of the online content from *Wikipedia*. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. There is no reliable circulation evidence showing that www.almamagazine.com qualifies as a professional or major trade publication or some other form of major media. Regardless, the August 3, 2011 article posted at www.almamagazine.com was published subsequent to the petition’s filing date. 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 (Reg’l Comm’r 1971). Therefore, the AAO will not consider the August 3, 2011 article as evidence to establish the petitioner’s eligibility.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

The petitioner submitted a certificate from [REDACTED] Torino, Italy, stating:

Hereby we confirm that [the petitioner] has been part of the [REDACTED] in the 2006 edition. We chose [the petitioner] as a judge because of his impressive curriculum, his unique vision in film and his growing reputation as a filmmaker in Torino and all Italy.

[The petitioner] has been a fair judge and his presence in the jury was appreciated by all contestants.

The AAO affirms the director's finding that the preceding evidence meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

The petitioner submitted online material about the Fallbrook Film Festival and Bangkok IndieFest 2010, but there is no documentary evidence demonstrating that the petitioner's work was displayed at those venues. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner also submitted documentation indicating that his short film [REDACTED] was displayed in the New Filmmakers Los Angeles forum at Sunset Gower Studios, the Kent Film Festival in Connecticut, the Litchfield Hills Film Festival in Connecticut, and the 6th New York City Downtown Short Film Festival. The AAO affirms the director's finding that this documentation meets the plain language requirements of the regulation 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.

The petitioner submitted four recommendation letters as evidence for this regulatory criterion.

[REDACTED] states:

I first met [the petitioner] during production of my movie [REDACTED] as he was second assistant director.

As a director on a set, I meet a lot of people who are collaborating with me and [REDACTED] made no exception, but despite that I have a clear memory of [the petitioner]. He was assigned as second assistant for the main unit and first assistant for the second unit. Due to the fact that we were mainly shooting in Torino, [the petitioner's] birthplace, he quickly became a key member of the crew, since he had all answers and knowledge we needed to develop logistics for the principal photography.

[REDACTED] states:

The film community in Torino is growing but it's not difficult for a person in my position to meet and know almost every filmmaker who lives or has been living in the area.

[The petitioner] has been a part of the film settlement for several years, since his first jobs as Assistant Director in such works like [REDACTED] and [REDACTED]

[REDACTED] states:

[The petitioner] is a gifted artist, as evidenced by his extensive participation in film competitions at the national and international level, the fact that his work has received enthusiastic reviews, his innovative style, reflecting both European and American influences, his receipt of awards, the fact that he has been profiled in print and online, and the fact that his work has been showcased in a number of international venues.

The preceding statement is identical in content to a statement in the letter from [REDACTED] an Italian film critic and artistic director, and [REDACTED]. In addition to the preceding statement, three subsequent paragraphs in the letters from [REDACTED] are identical. It is not clear who is the actual author of the duplicative text in their letters of support, but it is highly improbable that these two individuals independently formulated the exact same wording. While it is acknowledged that [REDACTED] have both lent their support to this petition, it appears that at least one of them did not independently prepare significant portions of his letter. Accordingly, the AAO finds their duplicative comments to be of limited probative value.

[REDACTED] further states:

I have had the opportunity to meet and verify [the petitioner's] extraordinary work attitude, ethics and abilities thanks to the many movie productions [the petitioner] worked on that have been realized in Piedmont with the support of Film Commission Torino Piemonte Among these movie productions are: [REDACTED] and the widely known and appreciated [REDACTED], presented in Cannes in 2008.

In all of the above mentioned movie productions, [the petitioner] worked as an assistant to the directors, thus acquiring great skills and experience and achieving [sic] at the same time, outstanding and very well appreciated results, as it was frequently outlined not only by the film's directors and producers, but also by all of his coworkers.

The preceding letters of support mention the petitioner's work as an "assistant" director for [REDACTED]. The petitioner also submitted information about [REDACTED] from *Wikipedia*. As previously discussed, there are no assurances about the reliability of the online content from *Wikipedia*. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a

distinguished reputation.” [Emphasis added.] The petitioner failed to demonstrate how a film equates to an “organization” or “establishment.” Further, there is no evidence demonstrating that petitioner’s role was leading or critical to the films as a whole. A conclusion that the petitioner played a critical role for the films simply by competently working in a position that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that production companies do not typically hire individuals to fill roles that serve no purpose for the employer; yet not every employee for a distinguished organization meets this criterion. The petitioner’s evidence fails to demonstrate how his role differentiated him from the numerous other individuals who worked on the films, let alone their directors, writers, producers, and principal cast members. The documentation submitted by the petitioner does not establish that he was responsible for the preceding films’ success or standing to a degree consistent with the meaning of “leading or critical role.”

The reference letters submitted by the petitioner are not without weight and have been considered above. 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 (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 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 795-796; see also *Matter of V-K-*, 24 I&N Dec. at 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 written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence.

The AAO affirms the director’s finding that the petitioner failed to submit evidence demonstrating that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

This regulatory criterion focuses on volume of sales and box office receipts as a measure of the petitioner’s commercial success in the performing arts. Therefore, the mere fact that the petitioner has directed a short film or participated in filmmaking projects would be insufficient, in and of itself, to meet this regulatory criterion. The evidence must show that the volume of sales and box office receipts reflect the petitioner’s commercial success relative to other filmmakers in the performing arts.

The petitioner submitted the Articles of Organization of [REDACTED] and a fill-in-the-blank “Membership Certificate” containing a handwritten entry that he is the registered holder of 50 Membership Interests in the company. The petitioner also submitted an Internal Revenue Service letter addressed to [REDACTED] informing [REDACTED] that [REDACTED]

█ has been assigned an Employer Identification Number. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the form of “sales” or “receipts;” simply submitting documentation indicating that the petitioner had involvement in starting a business in New York does not meet the requirements of this regulatory criterion. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner has achieved commercial successes in the performing arts.

The AAO affirms the director’s finding that the petitioner failed to submit evidence of his commercial successes in the performing arts, as shown by box office receipts or sales. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

Summary

The AAO withdraws the director’s determination that the petitioner meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

The AAO will 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.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO’s discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (viii), and (x).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the petitioner’s Aloha Accolade Award in the “Student Films” category at the Honolulu Film Awards does not rise to the level of a nationally or internationally recognized award for excellence in the field. The AAO cannot conclude that selection for a lower tier award that is annually conferred upon a substantial number of entries is indicative of national or international recognition for excellence in the field of filmmaking. Further, the AAO notes that competition for the award in the petitioner’s category was limited to other students. Therefore, experienced filmmakers who have already completed their educational training were excluded from consideration. The petitioner has failed to demonstrate that his receipt of a “student” award is commensurate with being “one of that small percentage who have risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow

that receiving an award limited to students should necessarily qualify an individual for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of who have risen to the very top of the field of endeavor." The petitioner's Aloha Accolade Award in the "Student Films" category is not indicative of or consistent with sustained national or international acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner holds membership in associations requiring outstanding achievements of their members, as judged by recognized national or international experts in his field. The petitioner has not established that his memberships are indicative of or consistent with sustained national or international acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including an author, not being about the petitioner, not including a full English language translation, or not being accompanied by evidence that they were published in major media. Moreover, much of the submitted material portrays the petitioner as an aspiring student filmmaker rather than as being among that small percentage who have risen to the very top of the field. The petitioner has failed to demonstrate that the evidence he submitted is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field.

In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. As previously discussed, the petitioner submitted a certificate reflecting his participation as a judge for the [REDACTED] held in his hometown of Torino in [REDACTED]. The certificate states that the petitioner was selected based on his "growing reputation as a filmmaker." Such a characterization

is not indicative of or consistent with a conclusion that the petitioner is already one of the small percentage at the very top of her field. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for student filmmakers progressing toward the top at some unspecified future time. Further, there is no supporting evidence documenting the reputation of the [REDACTED] the specific films judged by the petitioner, or the level of expertise of those whose films he evaluated. Participation as a judge for an obscure film competition in one's hometown or for an event with a narrow field of competitors of unknown skill level is not indicative of or consistent with sustained national acclaim at the very top of the field. Moreover, there is no documentary evidence showing that the petitioner has participated as a judge of the work of others subsequent to 2006. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a filmmaker has been *sustained*. 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). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(vii), the petitioner has not established that the display of his short film [REDACTED] at the New Filmmakers Los Angeles forum, the Kent Film Festival in Connecticut, the Litchfield Hills Film Festival in Connecticut, and the 6th New York City Downtown Short Film Festival are indicative of sustained national or international acclaim at the very top of his field. The submitted evidence fails to demonstrate a level of distinction that sets the petitioner's films apart from those of most others in his field. For instance, the New Filmmakers Los Angeles forum is intended for emerging filmmakers rather than for those who are already among that small percentage who have risen to the very top of the field of endeavor. It must be stressed that a filmmaker does not demonstrate sustained national or international acclaim simply by arranging for his work to be displayed or by entering short film contests for students. In this case, the petitioner has not submitted evidence showing that the venues where his short films have been showcased are of such a caliber that his participation is consistent with or indicative of sustained national or international acclaim at the very top of the filmmaking field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(x), the failed to submit documentary evidence of "box office receipts" or "sales" showing that he achieved commercial successes in the performing arts. The evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of

expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim in filmmaking, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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). While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained.

III. Continuing work in the area of expertise in the United States

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. As previously discussed, the petitioner submitted the Articles of Organization of [REDACTED] and a fill-in-the-blank "Membership Certificate" containing a handwritten entry that he is the registered holder of 50 Membership Interests in the company. The petitioner also submitted an Internal Revenue Service letter addressed to [REDACTED] informing [REDACTED] that [REDACTED] has been assigned an Employer Identification Number. None of this documentation explains the petitioner's specific role for the company or how he will continue to work as a filmmaker. The petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a personal statement detailing plans on how he intends to continue working in the United States. Accordingly, the petitioner failed to submit "clear evidence" that he would continue to work in his area of expertise in the United States as required by the regulation at 8 C.F.R. § 204.5(h)(5).

IV. 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. Further, the petitioner has not submitted clear evidence demonstrating that he will continue to work in his area of expertise in the United States. 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).

For the reasons discussed above, the AAO will not affirm the director's certified decision to approve the petition. Instead, the AAO will withdraw the director's certified decision, and the petition will be denied. 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 certified approval is withdrawn. The petition is denied.