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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: **AUG 08 2012**

Office: NEBRASKA SERVICE CENTER

FILE: 

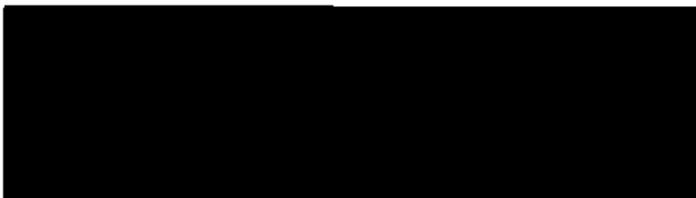
IN RE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew *for*  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 in cinematography, pursuant to section 203(b)(1)(A) of the Immigration and Nationality 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.

The petitioner’s priority date established by the petition filing date is November 5, 2010. On November 10, 2010, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued her decision on December 27, 2010. On appeal, the petitioner submits a brief with additional documentary evidence. 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 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.*; 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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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. Previous O-1 Nonimmigrant Approval

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. First, in the motion picture or television industry, the regulatory requirements for an immigrant alien of extraordinary ability regulation differ dramatically from those for nonimmigrants, which require evidence of “extraordinary achievement.” 8 C.F.R. § 214.2(o)(1)(ii)(2). The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part:

*Extraordinary achievement* with respect to motion picture and television productions as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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.” While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation at 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the motion picture industry are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(v). The distinction between other fields and the motion picture industry, which appears in 8 C.F.R. § 214(o) does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner’s approval for a non-immigrant visa under the lesser standard of “extraordinary achievement,” a standard counsel references in his initial brief, is not evidence of the petitioner’s eligibility for the similarly titled immigrant visa.

In addition, it must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). It would be absurd to

suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 \*7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

#### B. 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 discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this 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.*

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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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.

*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.*

Throughout the proceeding, counsel has mischaracterized this criterion by asserting that the petitioner "has achieved national or international recognition for achievements evidenced by critical reviews or other published material by or about the individual in major newspapers, trade journals, magazines or other publications." This language, however, is found in the nonimmigrant regulation at 8 C.F.R. § 214(o)(3)(iv)(B)(2) and differs from the language at 8 C.F.R. § 204.5(h)(3)(iii), the criterion at issue for this immigrant petition.

Pursuant to 8 C.F.R. § 204.5(h)(3)(iii), this criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's favorable eligibility determination related to this criterion for the reasons outlined below. Within the initial submission, the petitioner provided a list of evidence within counsel's brief indicating the evidence that should be considered under the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), but failed to claim the criterion for the display of the alien's work criterion at 8 C.F.R. § 204.5(h)(3)(vii). However, in response to the RFE, the petitioner also listed some of the same evidence previously claimed under the published material criterion, and requested it be considered under the display of the alien's work criterion. The director's decision granted both the published material criterion as well as the display of the alien's work criterion without any discussion of what evidence sufficiently demonstrated the petitioner's eligibility under each. Consequently, the AAO must presume the director followed the petitioner's latest directions listed in the RFE. The petitioner provided 15 articles, three photos with a handwritten caption, five movie reviews, four film synopses, and one festival program as evidence under this criterion.

Regarding the festival program, although a film in which the petitioner is listed as the cinematographer appeared within the [REDACTED] program, neither the program nor the festival are about the petitioner *and* relating to his work in the field. Regardless, not every printed document constitutes published material. A printed program for distribution at a festival is not published material in a professional or major trade publication or other major media.

Regarding the three photographs appearing on the website *idlebrain.com*, the petitioner and counsel misconstrue the type of evidence contemplated by 8 C.F.R. § 204.5(h)(3)(iii), which plainly states: "Such evidence *shall* include the title, date, and author of the material, and any necessary translation." (Emphasis added). The submitted evidence lacks all of the elements required by the last sentence of this criterion as these are not published written or broadcast works that are contemplated as qualifying under this criterion. The plain language of the regulation requires an author, title, and date of the published material, which is present in written published works (or transcripts of broadcast works). The petitioner failed to provide documentary evidence of these required elements thereby disqualifying the submitted evidence. Moreover, although the photograph is accompanied by self-serving handwritten notations; going on record without supporting documentary evidence is not sufficient for purposes of meeting the petitioner's 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)).

Regarding the movie reviews, articles that are about a movie are not about the petitioner. *Cf. Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). While the petitioner is briefly mentioned within the reviews, he and his work are not the primary topic of the article. Moreover, the majority of these reviews are missing the name of the author. Additionally, the reviews originating from the *nytimes.com* website were performed by the website's anonymous readers rather than by an employee or representative of the *New York Times*. Such posted material on the Internet is not published material by identified journalists or other authors as contemplated by the regulation.

Only one of the fifteen articles can be construed to be about the petitioner, relating to his work in the field. This article is titled, "[REDACTED] to cinematograph Ramcharan's flick," and appeared on the website, *indiaglitz.com*. This short article does not bear the author's name nor does the petitioner indicate which of the three required publication types under which this evidence qualified and the record contains no evidence that the website is a professional or major trade publication or other major media. The plain language of the regulation requires not only the title and the date, but also that the petitioner provide the name of the author. The remaining articles are primarily about films for which the petitioner performed work. Articles that are not about the petitioner do not meet this regulatory criterion. *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*7.

As such, the petitioner has not submitted probative evidence that meets the plain language requirements of this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The

petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and, thus, 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). Contributions of major significance connotes that the petitioner’s work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Within the initial petition filing brief, counsel does not directly address the contributions of major significance criterion found at 8 C.F.R. § 204.5(h)(3)(v). In response to the director’s RFE, counsel discussed letters from peers and experts in the petitioner’s field of film-making under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel’s brief points to the previously submitted expert letters in addition to what counsel characterizes as “guidelines” from USCIS.

Regarding the purported USCIS guidelines, the appellate brief states:

See attached guidelines form [sic] USCIS about this point. Which clearly state that testimony or support letters from experts which discuss beneficiary’s contribution of major significance or evidence that the beneficiary’s major significant contribution has provoked widespread public commentary in the filed [sic] or has been widely voted [sic; should state widely cited], Contracts with company using his services, etc.

The purported USCIS guidelines bear no indication that the documentation originated from USCIS as guidelines on which the public may rely. In fact, the document contains a reference to the American Immigration Lawyers Association (AILA), which states, “AILA InfoNet Doc. No. 11012168. (Posted 01/21/11).” As this evidence does not contain any indication that USCIS issued this document as official guidance, counsel’s assertion within the appellate brief that such evidence is sufficient by itself will not be considered within this decision. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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 unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

Moreover, the document purported to constitute “guidelines” appears to be a standard template for an RFE. Significantly, that document includes the following language:

Note: Letters and testimonies, if submitted, must provide as much detail as possible about the beneficiary’s contribution and must explain, in detail, how the contribution was “original” (not merely replicating the work of others) and how they were of “major”

significance. General statements regarding the importance of the endeavors are insufficient.

The petitioner submitted numerous reference letters praising his talents as a cinematographer and discussing his activities in the field such as winning awards, working on high profile projects. The letters also affirm that his films have been screened at major film festivals. Talent and experience in one's field, however, are not necessarily indicative of original artistic contributions of major significance in the petitioner's field. It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. The referenced letters submitted by the petitioner briefly discuss his success and artistic activities, but they do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance. While the petitioner has served as a cinematographer of films, it is inherent to the occupation to direct the film's photography and additional job-related elements. The petitioner's ability to make a living in his occupation, even a competitive one, does not demonstrate that he has made contributions of major significance in the field.

The letter from [REDACTED] a writer and director reiterated the claims within some of the other letters that the petitioner is an extraordinary talent and that the petitioner was critical to the success of a film on which both men worked. It is not sufficient for the petitioner to have an impact on a single film as [REDACTED] asserted. Instead the regulation specifically requires the petitioner to have made "contributions of major significance in the field," as a whole. [REDACTED], Director of Red Ice Films indicated that the petitioner "is undoubtedly the most promising talent of his generation," and that the petitioner's talents were directly responsible for the success of a "nationwide awareness campaign." [REDACTED], however, did not articulate how the petitioner has had an impact in his field to the extent that it is considered to be of major significance. Nor did the petitioner provide documentary evidence to corroborate any impact his original work has had in his field.

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

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as

advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The director determined that the petitioner met the requirements of this criterion. The petitioner provided two pages that allegedly represent the festival program for the Sixth Indo-American Arts Council, Inc. without providing the whole document. The page that allegedly established that a film on which the petitioner worked was presented at the festival contains only text, three pictures, and a description of the film [REDACTED]. The petitioner provided additional evidence within the record of proceeding that established that he served as the cinematographer for this film. Although this description correlates with one of the petitioner's films, it does not demonstrate that this film was shown at the festival as it does not contain any text bearing the festival's name, nor does it contain any other representations to sufficiently link it with the festival. Nevertheless, the petitioner submitted other sufficient documentation such that the AAO affirms the director's finding that the petitioner meets the plain language requirements of this criterion.

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

Initially, in response to the director's RFE, and on appeal, counsel asserts that the petitioner has performed a leading or critical role "for organization and productions that have a distinguished reputation." The regulation, however, requires a leading or critical role for "organizations or establishments," not individual productions.

More specifically, this criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or

establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act.

The petitioner provided some of the same expert letters that he claimed under the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v). The director determined that the petitioner failed to meet the requirements of this criterion.

The majority of the letters merely claim that the petitioner was crucial to projects, productions, and films without describing how he was instrumental within or responsible for the success of the organization as a whole. Simply being responsible for the success of a project or film, or performing in a leading role for an individual campaign is insufficient to demonstrate eligibility under this criterion.

The letter from [REDACTED], reflected that the petitioner "has proved invaluable in the tremendous growth of my company. He was instrumental in setting up the state of the art Digital Intermediate facility at Sprit, which is among the finest in the world. First, [REDACTED] does not explain how the petitioner was "instrumental" to the set-up of the digital intermediate facility. [REDACTED] provides no detail as to what the petitioner did for this facility. With regard to [REDACTED] assertions about the quality of the facility, 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*, I&N Dec. at 190). The record contains no independent confirmation as to the distinguished nature of Spirit Media Pvt. Ltd. or the independent reputation of the digital intermediate facility to which the petitioner contributed.

[REDACTED], a director and producer [REDACTED] asserts that the petitioner shot most of [REDACTED] recent films and is "a key collaborator [who] has been paramount in the success of many award-winning films." The petitioner, however, did not submit independent evidence corroborating the distinguished reputation of [REDACTED]

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<sup>3</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on July 31, 2012, a copy of which is incorporated into the record of proceeding.]

The letter form [REDACTED] asserts that the petitioner opted for Panavision cameras in India, where most camera operators used Arri cameras. [REDACTED] reflects that the petitioner's use of these cameras was instrumental in the success of the company's operations. [REDACTED] explains that the petitioner "has put our cameras and lenses through rigorous testing and has pushed for it to be used not only on his films but also many other productions." The record does not reflect that the petitioner officially promoted Panavision cameras through advertisements or other means of promotion. Not every client or customer serves a leading or critical role for the company whose products he uses.

None of the evidence provided demonstrates how the petitioner served in a leadership role within an organization or establishment with a distinguished reputation and for the entire organization or establishment, nor does it demonstrate how the success of the organization or establishment itself is considerably attributable to any critical role the petitioner performed within the organization or establishment with a distinguished reputation. The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.<sup>4</sup> The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r

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<sup>4</sup> While the AAO acknowledges that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 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 . . . 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."

1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Accompanying the initial petition filing the petitioner provided his contracts with [REDACTED]. In response to the director's RFE the petitioner provided this same evidence in addition to a contract with [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, counsel's brief merely states: "The contracts were submitted with business plan." It is not clear how the petitioner intended to establish that his evidence satisfied this criterion when he did not identify an error in law or an error in fact on the director's part, and also failed to provide evidence of the remuneration of others at the top of his field for the AAO to compare with his own remuneration. The director specifically noted within her decision that the record lacked evidence to compare with the petitioner's and the petitioner did not attempt to remedy this shortcoming.

On appeal, the petitioner makes only passing reference to this issue, stating: "The contracts were submitted with business plan." The petitioner failed to identify an incorrect application of law or statement of fact underlying the director's finding that the petitioner's contracts alone were insufficient. The AAO, therefore, considers this issue to be abandoned. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

### C. Summary

The petitioner has failed to submit relevant and probative evidence to satisfy the antecedent regulatory requirement of three types of evidence.

## III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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” 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>5</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>5</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOI*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(i)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).