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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:

Office: TEXAS SERVICE CENTER

FILE:

AUG 09 2012

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
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the arts as a calligraphy artist, 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 February 23, 2011. On March 8, 2011, 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 May 5, 2011. On appeal, the petitioner submits a brief with new 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.¹ 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.*

¹ 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. Translated Evidence

“Petitioners and applicants for immigration benefits are required by regulation to provide certified English translations of any foreign language documents they submit.” *Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (citing 8 C.F.R. § 103.2(b), now promulgated at 8 C.F.R. § 103.2(b)(3)) which states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.” The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS).

While not addressed by the director in her decision, throughout the record of proceeding the petitioner submitted numerous translations that were not *each* accompanied by a certified translation in accordance with the regulation. Instead at the time he filed the initial petition, the petitioner provided a single, blanket certification for all of the foreign language documents signed by [REDACTED] that does not identify the specific translations to which it pertains. As noted above, the regulation does not contain any provision that allows for such a blanket translation certificate. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies, does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). In response to the RFE the petitioner submitted an additional blanket translation certificate signed by [REDACTED]. Again, this certification is insufficient to meet the regulatory requirements related to documents provided to USCIS in a foreign language. The AAO would not have deemed the director to have erred by putting the petitioner on notice that she was rejecting the deficient translations within the RFE. Consequently, the foreign language documents accompanied by these deficient translations have no evidentiary or probative value. The petitioner did provide some foreign language documents deriving from websites that also provide the English version of what appears to be the same content. This form of evidence is the only foreign language documentation in the record that is acceptable under the regulation.

B. Standard of Proof

Counsel's appellate brief indicated that instead of applying the preponderance of the evidence standard of proof, the director applied the higher standard of the clear and convincing evidence standard. The record does not support counsel's assertion that the director held the petitioner's evidence to an elevated standard beyond that which is required by most administrative immigration cases; the preponderance of the evidence standard of proof. The most recent precedent decision related to the preponderance of the

evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). This decision, and this standard, focuses on the factual nature of a claim; not whether a claim satisfies a regulatory requirement. *Id.* at 376. The preponderance of the evidence standard does not preclude USCIS from evaluating the evidence. The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* The *Chawathe* decision also stated:

[T]he “preponderance of the evidence” standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation’s eligibility as an “American firm or corporation” under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7. The final determination of whether the evidence meets the plain language requirements of a regulation lies with USCIS, not with counsel. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988) (finding that the appropriate entity to determine eligibility is USCIS in a scenario whereby an advisory opinion or statement is not consistent with other information that is part of the record). Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r 1989). The *Chawathe* decision further states:

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id. As the director concluded that the petitioner had not submitted relevant and probative evidence satisfying the regulatory requirements, the AAO concludes that the director did not violate the appropriate standard of proof. According to this analysis, the AAO affirms the director’s ultimate conclusion that the evidence does not establish the petitioner’s eligibility.

C. Evidentiary Criteria²

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner failed to meet the requirements of this criterion. Several forms of evidence that the petitioner provided related to this criterion are in a foreign language and the accompanying translations are deficient as each is not certified in accordance with 8 C.F.R. § 103.2(b)(3). The only acceptable evidence is in the form of website printouts whereby the website itself provided a foreign language version in addition to the English language version of the webpage's content. However, these website printouts only contain information related to the respective organization rather than demonstrating that the petitioner was the recipient of one of the claimed awards under this criterion. As such, the petitioner has failed to provide sufficient evidence to satisfy the plain language requirements of this criterion. On appeal, counsel opines:

The fact of winning [an] award, whether national or regional, itself has demonstrated the consensus of different judges or viewers in acknowledging the excellence of the quality and value of the artwork. This renders [the petitioner's] other awards relevant and significant in proving his excellence in his field, especially the regional awards are in Beijing metropolitan area which have gathered most of Chinese traditional arts.

Counsel's analysis ignores the explicit regulatory requirement that all qualifying prizes or awards be nationally or internationally recognized, and therefore is not persuasive. Just as USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5, as expressed in *Kazarian*, 596 F.3d at 1121, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008), neither can it ignore clearly stated regulatory requirements.

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

On appeal, the petitioner contests the director's determination regarding the following prizes or awards:

1. [REDACTED] in 2006;
2. [REDACTED] 2008;
3. [REDACTED] (2004); and
4. [REDACTED] 2007.

Counsel also lists multiple awards that the appellate brief admittedly classifies as regional awards, which lack the national or international recognition requirement within the regulation at 8 C.F.R. § 204.5(h)(3)(i). In addition to being regional, some of these awards are limited to youth or "new talent." It is the petitioner's burden to demonstrate that awards with a limited pool of competitors are still nationally or internationally recognized. The petitioner has not met this burden.

Regarding item 1, the director determined that the petitioner failed to demonstrate that the award was issued for excellence in the petitioner's field of endeavor. The evidence submitted on appeal overcomes the director's noted shortcoming that the petitioner failed to provide the criteria for the award. The record now demonstrates that CCCA issued the award for excellence. Remaining unresolved is the requirement that the award be nationally or internationally recognized. National and international recognition results, not from the individuals who issued the prize or the award, but through the awareness of the accolade in the field nationally or internationally. This can occur through several means; for example, through media coverage of the award selections.

The petitioner asserted that the Most Competitive Artwork award qualifies as a nationally or internationally recognized prize or award through: (1) the participation of international candidates; and (2) through acknowledgement from high ranking Chinese government officials of the 2007 New Year Convention of China Prominent Artists, which was the convention where the petitioner received this award. Evidence demonstrating that the award's candidates were from several regions of China as well as from other nations does not demonstrate this award is recognized at a national level. Selection from a national pool of candidates does not necessarily impart national significance to an award.

Regarding the acknowledgement from Chinese government officials, the record contains an article originating from *Forum for Asia* dated January 15, 2007, that reports on "telegraphs from high-rank[ing] officials of departments under the Party Central Committee expressing their best wishes that the Convention will be able to provide a platform to assist international artists' exchange." The "telegraphs" outlined within this article acknowledge the convention itself rather than any award issued

at the convention. The plain language of the regulation requires that the national or international recognition relate to the award rather than to the convention during which the award was issued. Additionally, the petitioner did not provide evidence of the “telegraphs” from the government officials to demonstrate any additional content that might relate to the petitioner’s award. Regarding whether the *Forum for Asia* constituted national or international recognition, the petitioner provided a Profile of *Forum for Asia* from the website asiaforums.org. However, this is not independent evidence as it originated from *Forum for Asia* and is essentially self-promotional material. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

Regarding item 2, the director determined that the petitioner submitted insufficient evidence to demonstrate that the award was nationally or internationally recognized. Counsel asserts this award is nationally or internationally recognized by stating within the appellate brief that this was a nationwide contest. National and international recognition results, not from the origins of the individuals who compete for the prize or the award, but through the awareness of the accolade in the field nationally or internationally. Evidence demonstrating the candidates for the award were from “all over China” does not demonstrate that this award is recognized in the field at a national level. As previously noted, the AAO will not presume national or international recognition in the field from the national nature of the pool of candidates.

In reference to item 3, the director determined that the award was not issued for excellence in the petitioner’s field of endeavor. On appeal, counsel does not offer any additional evidence or analysis to overcome the director’s noted shortcoming. It is also important to note that the petitioner’s evidence demonstrates only that he was a finalist, instead of establishing that he actually received a placement award. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt” of prizes or awards. The record is lacking evidence or analysis to describe how simply being a finalist is equal to receiving a prize or an award for excellence in the field of endeavor. The AAO concurs with the director’s determination that the petitioner has failed to submit evidence demonstrating that this award was issued for excellence in the petitioner’s field.

Regarding item 4, the director concluded that the petitioner failed to demonstrate that the award was issued for excellence in the petitioner’s field. The petitioner can establish that a prize or award was issued for excellence in his or her field through several means; for example, through evidence of the selection criteria for the award. On appeal, counsel asserts that the judging panel was allegedly “formed by masters in the art world.” Counsel further asserts that “[t]he winning works are the best of the best,” as the China International Artists Society (CIAS) reported in a 2007 article. Counsel concludes that this information is sufficient to show that the award was to recognize excellence in the petitioner’s field of endeavor. The director addressed the 2007 article within her decision and determined that the provided evidence amounted to vague assertions as no evidence was provided to demonstrate what CIAS considers to be the “best of the best” and “masters of the art world.” The director notified the petitioner that this could be accomplished through CIAS’s “bylaws, contest rules or other documentation.”

On appeal, the petitioner did not provide further evidence or analysis beyond what he provided to the director within the initial proceedings. The appellate brief and evidence submitted on appeal does not reveal the selection criteria. The AAO will not presume that a given award is issued for excellence in the field of endeavor from the panel of judges or vague media coverage, without evidence demonstrating that the issuing authority was recognizing excellence in the petitioner's field of endeavor, rather than participation or an achievement at a level less than excellence. The AAO concurs with the director's ultimate conclusion as it relates to this award; that the petitioner has not demonstrated that the award was one issued for excellence in the petitioner's field of endeavor.

The evidence submitted under this criterion has no evidentiary or probative value due to the deficient translations discussed within this decision. Notwithstanding this fatal evidentiary defect, the petitioner has not presented analysis or evidence on appeal that might demonstrate his eligibility 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.

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that he is a member of more than one association in his field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner's field, who represent the association, render this determination. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner failed to meet the requirements of this criterion. Several forms of evidence that the petitioner provided relating to this criterion are in a foreign language and the accompanying translations are deficient as each is not certified in accordance with 8 C.F.R. § 103.2(b)(3). The only acceptable evidence is in the form of a website printout whereby the website itself provided a foreign language version in addition to the English language version of the webpage's content. However, this website printout only contains information related to the respective organization rather than demonstrating that the petitioner was a member of the claimed association under this criterion. As such, the petitioner has failed to provide sufficient probative evidence to satisfy the plain language requirements of this criterion.

On appeal the petitioner claims eligibility for this criterion based on membership in three associations, each of which the director considered within her decision. The three memberships the petitioner claims on appeal are in the following associations:

1. The China Calligrapher and Painter Association (CCPA),

2. CIAS, and
3. The Beijing Calligraphers Association (BCA).

The evidence of the CCPA membership requirements within the initial filing conflicts with the evidence submitted in response to the RFE. Each form of evidence originated from different websites, yet the petitioner provided no explanation as to why he provided evidence from different sources. The initial evidence (listing six criteria) derived from ccapa.net, while the evidence provided in response to the RFE (listing eight criteria, some of which are similar but not identical to the six criteria claimed initially) derived from jjshh.com. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

Within the RFE response, the petitioner provided the CCPA bylaws, which contain the membership requirements and state: “[s]enior members must be recommended by CCPA members, evaluated by CCPA’s committee of art, and approved by CCPA’s standing committee.” This evidence does not demonstrate that the CCPA utilized nationally or internationally recognized experts to judge the achievements of prospective members. Additionally, the bylaws of the CCPA contain a list of requirements for membership, some of which are more demanding than others. For example, according to the materials submitted in response to the RFE, qualifying prospective members include an individual:

- Whose works have been published demonstrating a high level of achievement and profound influence in the work of calligraphy and painting;
- Who has earned a high level of expertise and reputation due to his or her contribution to artistic theory and history study and research; or
- Who has demonstrated equivalent level of superiority in art creation, or managers who has been actively involved in CCPA activities. (This bullet is a portion of the conflicting evidence).

However, according to the same submission, these qualifying elements are contained within a list of requirements that fall far short of meeting the plain language requirements of this criterion. For example, qualifying prospective members also include an individual:

- Whose works have been selected for exhibition hosted by CCPA;
- Who has obtained advanced artistic certificates; or
- Who has engaged in micro-inscription, 3-D creation and received awards. (This requirement is not listed among the six criteria in the initial evidence).

As a prospective member could qualify for membership based on just one of these lesser elements that do not exhibit outstanding achievement, the evidence does not demonstrate that the CCPA requires outstanding achievement as judged by recognized national or international experts in their disciplines or fields, as a condition of membership. Ultimately, the petitioner has not submitted consistent, credible evidence of the CCPA membership criteria such that he can meet his burden of proof as set forth in *Matter of Chawathe*, 25 I&N Dec. at 376.

The petitioner provided the CIAS bylaws in response to the RFE. This association's bylaws contain the membership criteria and reflect that the association has three types of members: entity members, individual members, and honorary members. The bylaws do not specify different requirements for the three different types of membership. The petitioner provided evidence of his membership card and a translation into English, but the translation, in addition to lacking an individual certification, failed to reflect which of the three membership types applies to the petitioner. Regardless, the bylaws reflect the following requirements of prospective members:

- Support CIAS's bylaws and possess expertise in artistic creation, research and education including non-professionals who love Chinese art;
- Willingness to join CIAS; and
- Recommended by two CIAS members and approved by CIAS's standing committee.

The CIAS bylaws lack both the requirement that nationally or internationally recognized experts in the petitioner's field judge a prospective member's achievements as outstanding, and that the association relies upon this determination of outstanding achievement as a condition of admittance. The additional evidence provided, such as the letter from [REDACTED] affirming a vague requirement of "specialty and excellence in the fields of artistic creation, research and education, etc.," is insufficient to demonstrate that CIAS requires outstanding achievements of its members as judged by national or international experts.

The final association that the petitioner claims within the appellate brief is the BCA. The bylaws that the petitioner provided for this association in response to the RFE reflect the following requirements for individuals who meet a set of prerequisites, which include "calligraphic practitioners and aficionados who have achieved substantial accomplishments in the field of calligraphy and acquire a substantial level of artistic achievements." The petitioner failed to provide evidence to represent what the BCA considers to be one who has "achieved substantial accomplishments" or to have acquired "a substantial level of artistic achievements" in the field of calligraphy. This information is insufficient to demonstrate that the BCA meets the plain language requirements of this criterion. In addition to the undefined accomplishments above, the BCA also admits potential members who can demonstrate one of the following:

- Possesses a high level of creativity and has participated for at least one time in an important exhibition or two times in special exhibitions organized by this organization; or

- Possesses a college degree in calligraphy and has been admitted to this organization's exhibition or has published at least two papers of calligraphic theory study in regional or local periodical; or who has a graduate degree in calligraphy and has actively participated [in] our activities.

This bulleted list represents the membership criteria that do not exhibit outstanding achievement. As such, membership in this association will not satisfy the requirements of this criterion.

Even if the petitioner were to demonstrate that one of his claimed memberships in an association could satisfy the regulatory requirements of this criterion, the evidence would still fall short of satisfying the membership criterion as the plain language of the regulation requires evidence of membership in "associations" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *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).

The evidence submitted under this criterion has no evidentiary or probative value due to the deficient translations discussed within this decision. Notwithstanding this fatal evidentiary defect, the evidence submitted does not meet the plain language requirements of this criterion.

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

The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion based on the deficient translations of foreign language documents that are not in accordance with 8 C.F.R. § 103.2(b)(3). The only acceptable probative evidence is in the form of website printouts whereby the website itself provided a foreign language version in addition to the English language version of the webpage's content. However, these website printouts only contain information related to the respective organization rather than demonstrating that the published material was about the petitioner and was related to his work.

Additionally, the director granted this criterion based on only one article in one publication, while the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material in "professional or major trade publications or other major media" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C.

§ 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning.

The director based her favorable determination on the article that appeared in *Culture Heritage*. However, a review of the evidence reveals that the petitioner provided a summary or a synopsis of the article, which essentially described the article in question. As the regulation requires a full English language translation of the article itself, a summary of the article is not acceptable evidence under the regulation at 8 C.F.R. § 103.2(b)(3). Of additional importance, the translation does not contain the date or the author of the article. The regulation requires not only the title of the evidence, but it also requires the date and the author of the material. See 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the article is not probative evidence that can satisfy the plain language requirements of this regulatory criterion. As evidence of the distribution of this publication, the petitioner submitted an uncertified translation of material from the website fsttcn.com indicating a distribution of 100,000. The petitioner, however, failed to provide any information about the independence and reliability of this website or an explanation as to how this distribution number is indicative of or consistent with a major trade publication or other major media.

The remaining forms of evidence under the published materials criterion consists of articles from the following:

1. *21st Century Education*;
2. *Beijing Evening News*;
3. *Calligraphy Guide Paper*;
4. *China Calligraphy and Painting Research*;
5. *China Calligraphy Academics*;
6. *Post of China – Post Cards*; and
7. culture.ifeng.com.

Regarding item 1, the petitioner provided a summary or a synopsis of an article that allegedly appeared in this publication. As the regulation requires a full English language translation, a summary of the article is not acceptable evidence under the regulation at 8 C.F.R. § 103.2(b)(3). The translation is also deficient of the author's name, which is required under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Counsel's appellate brief describes this publication as a professional or major trade publication. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The 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).

Regarding item 2, the petitioner provided more than one article from this source. The director determined that the evidence provided was primarily about a competition instead of being about the petitioner. Within the director's decision, she discussed the article about the 3rd Beijing Welcomes the Olympic Games. The director determined that this article was not about the petitioner and relating to

his work in the field. However, a review of the record reveals another article from the *Beijing Evening News* titled "Signing Promotion for the Collection of [the petitioner's] Calligraphic Works." This article is about him and relates to his work in the field. Counsel classified this publication as a form of major media within the initial filing and in response to the RFE. However, in reference to this article appearing in a form of major media, the petitioner only submitted the rankings from the *Mondo Newspapers* website. This site is directly affiliated with *Mondo Times*. A review of this website reflects that "Mondo Times is the worldwide media directory, covering thousands of newspapers, magazines, radio stations, television stations, networks and news agencies around the world."³ In fact, the website indicates that a user can search "33,100 media outlets in 213 countries." Further, a visitor to the website may add a media outlet by completing three steps. The fact that a website contains a listing for media outlets around the world is not persuasive evidence that every listed newspaper constitutes "major media."

The petitioner did not provide the circulation data of *Beijing Evening News* to compare with the circulation statistics of other Chinese newspapers, and he has consequently failed to establish that the *Beijing Evening News* is a form of major media. The petitioner also provided no information related to the distribution data of the *Beijing Evening News* to establish that this publication has a national rather than a regional reach within China. Publications with only a regional reach are not considered to be major media and the petitioner has not established that this publication is a professional or major trade publication as also permitted by the regulation.

The evidence relating to item 3 consists of a translated document that merely states that the petitioner's "master in Fine Arts Calligraphic works were published in Calligraphy Guide Paper, Issue 20, May 20, 2009." It is not apparent if this is a statement from an individual or if it derives from some other document. It is the petitioner's burden to demonstrate eligibility. It is not apparent from the translation to what foreign language document the translation relates. Thus, this evidence will not be considered within the current proceedings.

Item 4 noted above appears to be a photograph in the publication accompanied by a caption. A caption accompanying a photograph that accompanies an actual article is not published material about the petitioner relating to his work. Although the petitioner provided information about this publication, it is not apparent from where this information derived. The petitioner simply provided a typed page containing the information without any indication if this is a translation of another document or whether this is a stand-alone document. The petitioner also provided what appears to be a translation of another document about the *China Calligraphy and Painting Research* publication, but this evidence merely indicates *China Calligraphy and Painting Research* is a journal and does not demonstrate that it is a professional publication, or a major trade publication. The translation also failed to indicate the origin of this information to reflect if it is from the publication itself or from an independent source.

³ See <http://www.mondotimes.com/about/index.html>. Accessed on July 17, 2012, and incorporated into the record of proceeding.

Regarding item 5, the translation of the evidence merely reports that the names of the winners of the 3rd Beijing Welcomes the Olympic TV Calligraphy Competition were published in an issue of *China Calligraphy*, *China Art*, and that the petitioner won the bronze medal. It is not apparent whether the translation is a synopsis or if it is a direct translation of an article. Regardless this evidence is insufficient to demonstrate that this evidence equates to published material about the petitioner and relating to his work in the field. The petitioner provided the “About Us” page, which appears to be from the *China Calligraphy Academics* website. This evidence indicated that this is a national publication, but the petitioner failed to provide any independent information related to this publication. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO *aff’d* 2009 WL 604888 (9th Cir. 2009). Additionally, the translation failed to meet the plain language requirements of this criterion as it is lacking the title, date, and author of the article.

The evidence relating to item 6 consists of postcards that featured the petitioner’s artwork. The petitioner has not demonstrated that postcards are a professional or major trade publication or other major media as contemplated by the regulation. As such, this evidence will not be considered within this decision.

Regarding item 7, the petitioner provided evidence from the website, *culture.ifeng.com* accompanied by a translation into English. Counsel’s RFE response brief indicated that this website is the official website of the *Phoenix Chinese Channel*. The petitioner presented this evidence as a form of major media, but supported this assertion with evidence relating to the television portion of the company instead of information relating to the website itself. Since the evidence appeared on *culture.ifeng.com*, the petitioner must document that this Internet-based format is a form of major media instead of the *Phoenix Chinese Channel*.

In view of the foregoing, the petitioner has failed to provide sufficient probative evidence to satisfy the plain language requirements of this criterion and as a result, the AAO withdraws the director’s favorable determination as it relates to this 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 director determined that the petitioner met the requirements of this criterion. The AAO departs from the director’s eligibility determination related to this criterion because of the deficient translations noted above. Consequently, the document lacks the elements to qualify as probative evidence. As such, the AAO cannot ascribe any evidentiary weight to this facially deficient document.

Absent an individually certified translation, the petitioner has failed to provide sufficient probative evidence to satisfy the plain language requirements of this criterion and as a result, the AAO withdraws the director’s favorable determination as it relates to 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 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd 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.

The petitioner provided expert letters, a scholarly paper the petitioner authored, and media coverage of his work. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal the petitioner provides new evidence in the form of additional letters, and documents relating to the price of artwork. Neither counsel nor the petitioner contests the director's adverse determination under this criterion. Nor does either party assert an error in fact or an error in the application of the law on the director's part under this criterion. The petitioner simply presents new evidence in an attempt to satisfy this criterion's requirements.

where the petitioner attended the Master Program in 2006, asserts that the petitioner's "calligraphic works have exerted increasing influence on the Chinese calligraphic world and have attracted extensive attention." Although claims the petitioner's work has influenced his field, she failed to provide examples that the petitioner corroborated with additional documentary evidence. The remaining expert letters submitted before the director merely boast of the petitioner's skills and abilities as a calligraphist.

Within the RFE response, counsel comingled the analysis relating to the petitioner's contributions of major significance and his authorship of scholarly articles. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.⁴ Ultimately, the AAO will not presume that evidence directly relating to one criterion is presumptive evidence that an alien meets a second criterion. Such a

⁴ Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. However, if the petitioner sufficiently documented the manner in which his scholarly publication significantly impacted his field, this impact may be considered under this criterion. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. The reference letters submitted by the petitioner briefly discuss his artistic skills and cultural 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.

Counsel's RFE response brief put forth numerous reasons explaining why the petitioner's scholarly article amounted to a contribution of major significance in the petitioner's field. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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. at 188-89 n.6. Counsel also asserted that recognition of the petitioner's research through acceptance of his scholarly article for publication satisfied this criterion's requirement. While acceptance of his work for publication, circulation of that work and awareness of his ideas as expressed in reference letters is notable, they are not the only factors to be considered in determining the petitioner's eligibility for this criterion. A single instance of being published and personal awareness through peer letters may be reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work, but it is not an automatic indicator that the petitioner's work has been *of major significance in the field*. The AAO is not persuaded that the evidence submitted within the initial proceedings reflects that the petitioner's work has been of major significance in the field. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that his article has been influential at a level consistent with a contribution of major significance. In this case, the petitioner's documentation is not relevant probative evidence of the petitioner's significant impact in the field. Merely submitting documentation reflecting that the petitioner's work has been posted on websites is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work, once posted, has been of major significance in the field.

On appeal, the petitioner submits a second letter from [REDACTED], a professor at [REDACTED] into great detail regarding the history of calligraphy and explains how the petitioner possesses a unique ability to blend different types of script. The regulation, however, requires that any unique talent be a contribution in the petitioner's field that is of major significance. The professor did not describe how the petitioner's unique abilities have already had an impact in his field.

The petitioner also submits a second letter from [REDACTED] who affirms that the petitioner's research into Western Jin calligraphic history has filled a gap in a study that has been dormant in recent history. The petitioner did not provide documentary evidence to corroborate [REDACTED] claims. 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. Even if the petitioner had substantiated the

Dean's claims, the fact that his research is rare and focuses on a forgotten aspect of calligraphy does not demonstrate that his research has significantly impacted his field. Rather, the petitioner must demonstrate how this renewed focus has impacted the field.

The second letter from [REDACTED] asserts that the petitioner's unique research has changed the traditional cognition in regards to the calligraphy history in that period and has been well-received by professionals in [the] calligraphic field." He also asserts that the petitioner's "studies have made extraordinary contribution to the calligraphic world." The petitioner has not demonstrated what impact changing "the traditional cognition" has had in his field, and the professor's use of the regulatory language without specific details of the "extraordinary contribution" 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.).

The final form of evidence related to the petitioner's research is a letter from [REDACTED] who is employed at the Editorial Department of *China Painting and Calligraphy*. [REDACTED] closes the letter stating: "[T]he petitioner's] paper was distinguishing, incisive and novel that *it may drive* a thorough study of the calligraphic value of Loulan documents to fill the gap of Chinese calligraphic history research with respect to Western Jin Dynasty." (Emphasis added.) The language clearly indicates that the petitioner's research might have a future impact in his field, but it falls short of even claiming that his research has already impacted his field as a whole. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's research results are likely to be influential is not relevant or probative to the question of whether his findings are already recognized as major contributions in the field. 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. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. This letter discusses the future promise of the petitioner's research, rather than how his research already qualifies as a contribution of major significance in the 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 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). 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.

As such, the petitioner has failed to provide sufficient evidence to satisfy the plain language requirements of this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each 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 eligibility determination related to this criterion not only because of the deficient translations noted above, but also due to the fact that the petitioner only demonstrated he authored one scholarly article, while the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the petitioner’s authorship of “scholarly articles” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning. The fact that this same article appeared in the *Chinese Painting and Calligraphy*

periodical, the *China Knowledge Internet* website (www.global.cnki.net), as well as the Yanhuang China Calligraphy network website (www.yhsf.org) does not transform this single article into more than one distinct article.

As such, the petitioner has failed to provide sufficient probative evidence to satisfy the plain language requirements of this criterion and as a result, the AAO withdraws the director's favorable determination as it relates to this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy. The plain language requirements of this criterion requires that the work in the field is directly attributable to the alien. Additionally, the interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). The alien's work also must have been displayed at artistic exhibitions or showcases (in the plural). While neither the regulation nor existing precedent speak to what constitutes an exhibition or a showcase, Merriam-Webster's online dictionary defines exhibition as, "a public showing (as of works of art)."⁵ Merriam-Webster's online dictionary also defines showcase as, "a setting, occasion, or medium for exhibiting something or someone especially in an attractive or favorable aspect."⁶ 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 display of his work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases. The petitioner must satisfy 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 through the submission of three forms of evidence: (1) the exhibition held at the China National Museum of Fine Arts, (2) the Chinese Calligraphy and Painting Exhibition, and (3) a program related to the 12th Beijing Calligraphy and Seal Carving Exhibition. While these three forms of evidence might enable the petitioner to meet the plain language requirements of this criterion if each was accompanied by a sufficient translation and translator's certification in accordance with 8 C.F.R. § 103.2(b)(3), the fact remains that the petitioner did not provide the required translator's certification. Therefore, the AAO departs from the director's favorable eligibility determination related to this criterion.

Based on the petitioner's failure to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the petitioner has failed to provide sufficient probative evidence to satisfy the plain language requirements of this criterion and the AAO withdraws the director's favorable determination as it relates to this criterion.

⁵ See <http://www.merriam-webster.com/dictionary/exhibition>, accessed on July 17, 2012, a copy of which is incorporated into the record of proceeding.

⁶ See <http://www.merriam-webster.com/dictionary/showcase>, accessed on July 17, 2012, a copy of which is incorporated into the record of proceeding.

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.⁷ 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 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).

The director determined that the petitioner failed to meet the requirements of this criterion. On appeal counsel asserts that “the top calligraphers in China are also [the] top ones in the world because of this unique art originated from China and [is] mostly practiced in China. The four [calligraphers] selected [within the RFE response] are by no means an average calligrapher but the most regarded calligraphers in China.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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. at 188-89 n.6. Additionally, counsel’s assertion within the initial filing brief that: “[t]he established price for one work of calligraphy by calligraphers with comparable background [to the petitioner] is in the range of ¥500 – ¥2,000 per square” will also not be considered as this assertion does not constitute evidence. *Id.*

The petitioner provided a list of several of his works of art accompanied by the selling price of each piece. The remuneration range of his works is between ¥4,600 and ¥36,000. While the petitioner has demonstrated the remuneration for his works in the field, the plain language of this regulatory criterion requires evidence of “a high salary or other significantly high remuneration for services, *in relation to others in the field.*” (Emphasis added.) The petitioner also submitted the “Auction Prices of Artworks of China’s Top Notch Calligraphers in December 2010.” The translation does not identify the

⁷ 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.”

document it is translating nor does it provide the source of this information. The simple fact that one of these individual's works of art garnered a selling price between ¥1,120 and ¥13,440 does not establish that this is a high salary or significantly high other remuneration for the art of those in the petitioner's occupation. The petitioner offers no basis for comparison showing that his salary was high or that his other remuneration was significantly high in relation to others. The record is void of objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. In the present case, the petitioner has not submitted sufficient relevant, probative evidence of a high salary or other significantly high remuneration for services in relation to others in the field.

D. Summary

The petitioner has not submitted sufficient relevant, probative evidence to satisfy the antecedent regulatory requirement of three types of evidence.

E. Final Merits Determination

It is important to note that very few forms of evidence that the petitioner presented qualify as evidence under the regulations as each foreign language document is not accompanied by "a full English language translation which the translator has certified as complete and accurate" in accordance with the regulation at 8 C.F.R. § 103.2(b)(3). Normally, the AAO would not perform a final merits determination where the record lacks sufficient probative evidence. However, the AAO will perform a final merits determination since the director concluded that the petitioner (1) met at least three of the evidentiary criterion listed above and (2) performed her own final merits analysis. In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

The petitioner received several regional awards, which are found to be lacking a sufficient level of achievement to demonstrate that the petitioner is among those in the top of his field. Within the remaining four awards, some were not issued for excellence, while others lack national or international recognition. The awards from 2006 and 2008 were from a pool of national candidates; however, both awards lack national or international recognition. The petitioner failed to demonstrate that the remaining awards from 2004 and 2007 were issued for excellence in the petitioner's field. Two awards lacking national or international recognition, and two awards that were not issued for excellence in the field, all issued several years before the petitioner filed the instant petition are not demonstrative of sustained acclaim or that the petitioner is among that small percentage who have risen to the very top of the field of endeavor at the time of filing.

With regard to the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), as discussed above, the AAO concludes that the petitioner has not met this criterion. The petitioner's memberships consist of associations that do not require outstanding achievements of their members. The associations of which the petitioner is a member also do not rely upon nationally or internationally recognized experts to judge if a prospective member's achievements are outstanding. The types of membership that the petitioner presented are not demonstrative of a level of expertise in "that small percentage who have risen to the very top of the field of endeavor."

The AAO reversed the director's favorable determination as it relates to the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), as the petitioner merely provided a translated synopsis of the article rather than a translation of the article's actual content. The petitioner submits inadequate evidence to establish the beneficiary meets the requirements relating to published material about the alien and related to his work in the field under 8 C.F.R. § 204.5(h)(3)(iii). Evidence of published material that (1) is not accompanied by a full, individually certified translation of a foreign language document, (2) lacks corroborating evidence that it appeared in a professional or major trade publication or other major media, or (3) that relies upon the publication's own assessment of its reach does not represent a record of recognition or achievement indicative of sustained acclaim or rise to the level of being in the top percentage of the petitioner's field.

Evidence of a single instance of serving as a judge on a panel of an unspecified size in 2008 cannot demonstrate 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) or "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise" in February 2011 when the petitioner filed the petition. 8 C.F.R. § 204.5(h)(3).

The petitioner relies on a single article and several expert letters to demonstrate his claimed original artistic contributions of major significance in his field. The letters from those working in his field who provide praise of the petitioner's ability as a calligraphist lack the specificity to indicate how the petitioner's work has influenced his field and fail to reflect any original contributions of major significance made by the petitioner. The simple repetition of the statutory and regulatory requirements within the expert letters is insufficient to establish the petitioner's national or international acclaim. See *Fedin Bros. Co.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Additionally, the fact that the petitioner's research is novel or rare does not, by default, show that this research also has made a significant impact on his field. While the letter from [REDACTED] identified a future possible impact of the petitioner's work, a petitioner must show that his or her work has already been influential consistent with one who has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The AAO reversed the director's favorable determination as it relates to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), as the petitioner merely provided a single article that appeared in more than one publication while the regulation requires that the petitioner author "scholarly articles" in the plural. The evidence discussed above is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small

percentage who have risen to the very top of his field. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, the field's response to this document may be and will be considered in the final merits determination. The petitioner provides no information relating to the document's impact in his field, nor of any significant response to his research to indicate that it amounts to a relative breakthrough in the field.

The AAO reversed the director's favorable determination as it relates to the display of his work criterion under 8 C.F.R. § 204.5(h)(3)(vii), as the petitioner failed to provide sufficient evidence accompanying the foreign language documents. While the evidence, if accompanied by individually certified translations, would show the petitioner's work was displayed within various exhibitions at the China National Museum of Fine Arts and at the Chinese Calligraphy and Painting Exhibition, he failed to establish the significance of any of these exhibitions or showcases that might establish that the display of work at such a venue was commensurate with achieving sustained national or international acclaim and that this display of his work sets him significantly above almost all others in his field at a national or international level. The only evidence that appears to speak to the significance of the exhibition or showcase relates to the Second Beijing International Calligraphy Biennale. With regard to this exhibition, the petitioner only submitted photographs of what is allegedly the display of his work at this exhibition. In comparison, the calligraphic works of [REDACTED] who provided two expert letters on the petitioner's behalf, have been collected by national museums rather than simply being on display at short term lesser exhibitions or showcases. The petitioner's evidence is clearly insufficient to demonstrate that the display of his work at artistic exhibitions or showcases is among those in the top of his field.

The petitioner failed to establish that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner failed to demonstrate that the other calligraphists noted in the evidence were performing similar work at the top level of the petitioner's field. The petitioner must demonstrate the high-end earnings nationally of those in his occupation performing similar work at the top level of the field. Without such evidence, he cannot establish that his remuneration confirms that he enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor.

In this matter, the petitioner has not established with relevant probative evidence that his achievements at the time of filing were commensurate with sustained national or international acclaim as a calligraphy artist, 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. CONCLUSION

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

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

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

The 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.