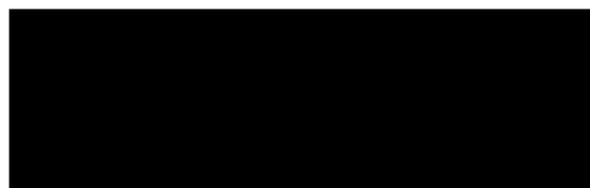


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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 15 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE:

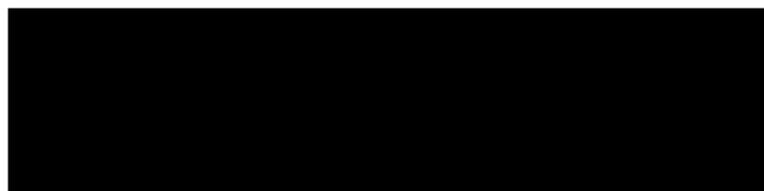


IN RE: Petitioner:
Beneficiary:



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
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on June 15, 2011, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a film director and writer. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of sustained national or international acclaim.

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

At the time of the original filing of the petition, counsel submitted documentation and indicated that "it is rather difficult to categorize the above list of evidence into clear-cut criteria" but claimed that the petitioner was eligible for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the commercial successes criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). However, counsel failed to specifically identify which documentation related to the criteria under the regulation at 8 C.F.R. § 204.5(h)(3). It was not apparent from the review of the evidence to which criteria the evidence pertained. The burden is on the petitioner to establish eligibility and not on the director to infer or second-guess the intended criteria.

The director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) describing each of the ten criteria under the regulation at 8 C.F.R. § 204.5(h)(3) and indicated that the petitioner failed to submit any documentary evidence regarding the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion, the judging criterion, the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the artistic display criterion, the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes criterion. In addition, the director indicated that the documentary evidence was insufficient to establish eligibility for the published material criterion, the original contributions criterion, and the leading or critical role criterion.

In response to the director's request for additional evidence, counsel submitted additional documentation but failed to identify the intended criteria, as well as identifying which documents, if any, pertained to the specific criteria. Based on the submitted documentation, the director determined in her decision that the petitioner failed to establish eligibility for the published material criterion, the original contributions criterion, and the leading or critical role criterion. Further, the director indicated that the petitioner failed to submit any documentary evidence for the scholarly articles criterion.

On appeal, counsel claims that the director "considered only four of the ten criteria set forth in 8 CFR § 204.5(h)(3), and did not properly apply the submitted evidence to the criteria." However, on appeal, counsel again fails to specifically indicate which additional criteria the petitioner purportedly meets and how the evidence pertains to those specific criteria. In fact, on appeal, counsel only references the original contributions criterion and the leading or critical role criterion. Once again, the burden is on the petitioner to establish eligibility and not on the AAO to infer or second-guess the intended criteria. If it is counsel's contention that the documentary evidence meets additional and different criteria, he has never explained which criteria they are and how the evidence relates to those criteria. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009).

The AAO notes here that in the director's decision regarding the published material criterion, she erroneously but innocently referred to the petitioner's field as "hospital medicine." While counsel raises this issue on appeal, the director referenced the petitioner's occupation as a film director and writer throughout her decision and thoroughly evaluated the petitioner's documentary evidence and concluded that the petitioner failed to submit documentary evidence of the petitioner's sustained national or international acclaim as a film director and writer. Notwithstanding, it would serve no useful purpose to remand the case simply for the director to correct her erroneous and innocent reference to the petitioner's field.

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. *[REDACTED] 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

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).

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.*

II. ANALYSIS

A. Evidentiary Criteria²

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.

As indicated above, on appeal, counsel did not contest the decision of the director for this criterion. However, counsel did reference newspaper articles regarding his claims of the petitioner's eligibility for the original contributions criterion and the leading or critical role criterion. As such, the AAO will evaluate that evidence to determine whether the newspaper articles meet the published material criterion.

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

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

1. An article entitled, [REDACTED] in [REDACTED] November 15, 2000, unidentified author, *Yonhap Newspaper*;
2. An article entitled, [REDACTED] June 2, 2001, unidentified author, *Korea Times*;

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

3. An article entitled, "[REDACTED]" April 17, 2000, unidentified author, *Korea Times*; and
4. An article entitled, "[REDACTED]" November 11, 1999, unidentified author, *Korea Times*.

Regarding item 1, the petitioner failed to include the author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the article is about the rock group, [REDACTED], rather than about the petitioner relating to his work. In fact, the article only mentions the petitioner one time as being the director of the rock group's music video. The article does not reflect published material about the petitioner relating to his work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, while the petitioner submitted a screenshot from Yonhap New Agency's website, the petitioner failed to submit any independent, objective evidence establishing that the *Yonhap Newspaper* is a professional of major trade publication or other major media. *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 - 4, the petitioner failed to include the authors of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the articles are about the Inter-Korean Motor Rally rather than about the petitioner relating to his work in the field. Although the articles reflect a few quotations by the petitioner regarding the motor rally, the articles do not reflect journalistic coverage about the petitioner relating to his work pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., 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). Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought [emphasis added]." The articles are about the motor car rally and the relationship between North and South Korea rather than about the petitioner's field of film directing and writing. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, while the petitioner submitted a screenshot from the *Korea Times*' website, the petitioner failed to submit any independent, objective evidence establishing that the *Korea Times* is a professional of major trade publication or other major media. *See Braga v. Poulos*, No. CV 06 5105 SJO *aff'd* 2009 WL 604888 (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).

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." In this case,

the petitioner's documentary evidence fails to reflect published material about him relating to his work in professional or major trade publications or other major media.

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

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

On appeal, counsel claims the petitioner's eligibility for this criterion based on his role with South Korea's "Sunshine Policy," his invitation to attend the Korean Film Festival in Los Angeles, California (KOFFLA), his upcoming film project, and recommendation letters.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic-related contributions "of major significance in the field." 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).

Regarding the "Sunshine Policy," the petitioner submitted a document entitled, "Peace and Cooperation White Paper on Korean Unification" authored by the Ministry of Unification, Republic of Korea that briefly indicated that "[Wooinbang Communications Co.] discussed with North Korea's Asia-Pacific Peace Committee (APPC) and the Committee for National Reconciliation (CNR) an auto rally in the Mt. Kumgang area." In addition, the petitioner submitted an article from the *International Journal of Korean Unification Studies* that briefly indicated that "[i]n the year 2000, [Wooinbang Communications Co.] sponsored an auto rally in the Mt. Geumgang area from July 3-4." Finally, the petitioner submitted the previously mentioned three articles discussed under the published material criterion. The articles reflect quotations from the petitioner who stated that "[t]he rally aims to promote the reconciliation and unity of our nation and to awaken young people's desire for reunification." "[t]he inter-Korean rally was conceived to open the way for national unification," and "I want to bring North Korea as much capitalist sport as possible." It is noted that counsel submitted photographs claiming that they reflected national television coverage of press conferences for the event.

It is further noted that on appeal counsel claimed that "[the petitioner] applied all his directorial skills and was engaged in all stages of planning and execution of the telecast." However, the record of proceeding fails to contain any documentary evidence establishing that the event was televised, let alone how the petitioner used his directorial skills to plan and execute the telecast. The unsupported statements of counsel on appeal or in a motion 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).

Notwithstanding, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance *in the field* [emphasis added]." As discussed under the

published material criterion, although the petitioner, through his communications company, was involved in organizing the motor car rally, there is no indication that the petitioner's involvement was in his field of film directing and writing; rather the motor car rally was political for the purpose of unifying North and South Korea. There is no evidence indicating that the event remotely relates to the petitioner's field of film directing and writing. *See Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). The petitioner failed to demonstrate that his participation in organizing a motor car rally is an original contribution of artistic-related contribution of major significance "in the field."

Regarding the petitioner's invitation to attend KOFFLA, the petitioner submitted a letter from [REDACTED] Director of KOFFLA, inviting the petitioner to attend the festival. However, the petitioner failed to submit any documentary evidence demonstrating that he actually attended KOFFLA. Moreover, even if the petitioner did attend the festival, participation in such an event, however, does not equate to an original contribution of major significance in the field. There is no evidence showing that the petitioner has made any original contributions to KOFFLA, let alone original contributions of major significance in the field as a whole. Simply being invited to attend a festival is insufficient without documentary evidence reflecting that the petitioner's actual attendance and participation resulted in original contributions of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding the petitioner's upcoming film projects, the petitioner submitted documentary evidence reflecting the petitioner is trying to make a movie, [REDACTED]. The petitioner submitted a letter from [REDACTED], Executive Producer at Sony Pictures Entertainment, Inc., who stated that "it has tremendous *potential* for domestic and international success [emphasis added]." In addition, the petitioner submitted a letter of intent from [REDACTED] who stated that the story has "great international exploitation *potential* [emphasis added]." Further, the petitioner submitted a letter from [REDACTED] who stated that the movie "will be an outstanding business deal for your company to be involved in [emphasis added]." Also, the petitioner submitted a letter from [REDACTED] who stated that the film "will open new venue for Asian American young people [emphasis added]." Moreover, counsel claimed on appeal that "the film *promises* to be one major artistic, political, and economic significance [emphasis added]" and "[the petitioner's] film will have significant social and artistic impact by bringing this history to light [emphasis added]."

A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's movie has not been made and is still ongoing. In fact, counsel claimed that the movie was "well into the pre-production stage" and [REDACTED] claimed that if the petitioner's petition is not approved the "movie will not be made." The actual present impact of the petitioner's work has not been established. Rather, the letters and counsel speculate about how the petitioner's movie may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). Whether referencing an immigrant or a nonimmigrant classification, case law requires that an alien applying for a benefit, or a petitioner seeking an immigration status for a beneficiary, must demonstrate

eligibility for the benefit or the status at the time the petition is filed. *See Matter of Pazandeh*, 19 I&N Dec. 884, 886 (BIA 1989) (citing *Matter of Atembe*, 19 I&N Dec. 427, 429 (BIA 1986); *Matter of Drigo*, 18 I&N Dec. 223, 224-225 (BIA 1982); *Matter of Bardouille*, 18 I&N Dec. 114, 116 (BIA 1981)). A petition may not be approved if the beneficiary or the self-petitioner was not qualified at the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) regarding nonimmigrant petitions. The Regional Commissioner in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977) emphasizes the importance of not obtaining a priority date prior to being eligible, based on future experience. This follows the policy of preventing affected parties from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. In fact, this principle has been extended beyond an alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977), which provides that a petition should not become approvable under a new set of facts. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). The assertion that the petitioner's movie will likely be influential is not adequate to establish that his work has already recognized as a major contribution in the field. While the letters praise the petitioner's movie as great potential interest, the fact remains that any measurable impact that results from the petitioner's movie will likely occur in the future.

Finally, regarding the few recommendation letters, they fail to indicate that his contributions are of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance [REDACTED] stated that the petitioner "has been well maintained [sic] his contributions for the community through his passion and creativity in Movie industries." [REDACTED] failed to identify the petitioner's contributions and how they have been of major significance in the field. The lack of any specific information offers no evidence of original contributions of major significance in the field.

Moreover, [REDACTED] stated that the petitioner "possesses an exceptional understanding of technology and art, which make[s] Him unique and one of the top visual effects supervisor and artist in the industry." Notwithstanding that the petitioner's field is film directing and writing rather than visual effects supervision, having a diverse or unique skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

While the few letters praise the petitioner and his work, there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those

contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. 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 the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without 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. *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 lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when 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.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion.

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

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

On appeal, counsel claims:

As President of [REDACTED], [the petitioner's] role was leading and critical as it was his vision that ultimately led to the success of the historic event. [The petitioner] was instrumental in obtaining proper authorization

from both the North and South governments to hold and film the event. [The petitioner] applied all his directorial skills and was engaged in all stages of planning an execution of the telecast. The event was covered by major news outlets throughout Korea including Korea's three major broadcasters, the Korean Broadcasting System (KBS); the Seoul Broadcasting System (SBS); and the Munhwa Broadcasting Corporation (MBC). Due to [the petitioner's] leadership and directorial skills, the event was so successful that [Wooinbang Communications Co.] was commissioned to continue the races between the two nations and strengthen the spirit of cooperation between the nations.

As discussed throughout this decision, the petitioner filed the employment-based immigrant petition to seek classification as an alien with extraordinary ability as a film director and writer. While the petitioner submitted documentary evidence reflecting his involvement in the motor car rally event, there is no documentary evidence reflecting that he filmed the event or his involvement related to his field of film directing and writing. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, the previously indicated photographs reflected claims of a press conference by news agencies rather than evidence that the petitioner filmed the event. The AAO must look to the documents executed by the petitioner and not to subsequent statements of counsel. *Matter of Izummi*, 22 I&N Dec. 169, 185 (Comm'r 1998).

Notwithstanding the above, the plain language of the regulation requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a *distinguished reputation* [emphasis added]." The petitioner failed to submit any documentary evidence demonstrating that Wooinbang Communications Co. has a distinguished reputation.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that his role with Wooinbang Communications Co. meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner to perform in a leading or critical role for more than one organization or establishment. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). In the case here, on appeal, counsel only claimed the petitioner's eligibility for this criterion based on one organization.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

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

B. Summary

The petitioner has failed 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.

Even if the petitioner had 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.⁴ 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.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 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(f)(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).



Page 13

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.