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

[redacted]

DATE: DEC 21 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and reaffirmed that decision on motion. The matter is now before the AAO again on a second motion to reopen. The motion will be dismissed, the previous decisions of the AAO will be affirmed, and the petition will remain denied.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts.[1] 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). U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2). The 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.

In the May 24, 2011 decision of the AAO dismissing the petitioner's appeal, the AAO found that the petitioner had failed to establish that she meets at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). The AAO determined that the petitioner's evidence had met the category of evidence at 8 C.F.R. §§ 204.5(h)(3)(vii). The AAO specifically and thoroughly discussed the petitioner's remaining evidence and determined that she failed to establish eligibility 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 original contributions of major significance criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes in the performing arts criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). Thus, the AAO concluded that the

[1] According to Form I-94, Arrival-Departure Record, the petitioner was last admitted to the United States on March 3, 2007 as an F-1 nonimmigrant student.

petitioner had failed to satisfy the antecedent regulatory requirement of three categories of evidence. The petitioner's subsequent motion was dismissed as untimely and for not meeting the requirements of a motion to reopen.

On motion, the petitioner fails to offer arguments and evidence relating to the grounds underlying the AAO's most recent decision dated June 29, 2012. The petitioner bears the burden of establishing that the AAO's dismissal of the motion to reopen was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing the motion, then there would be grounds to reopen the proceeding. The petitioner has not done so in this proceeding. Accordingly, the motion is dismissed.

Even if the petitioner had successfully established that the AAO's prior decision on motion was erroneous, which she has not, the evidence submitted with the instant motion does not establish her eligibility. The petitioner submits four letters of support in the Russian language from [redacted], and [redacted]. The English language translations accompanying the preceding letters contain various grammatical, punctuation, and spelling errors. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. While the English language translations of the letters included a brief certification by the translator stating "I translated the letter . . . from Russian language to English," the translations were not certified as "complete and accurate" and the translator did not certify that she was "competent to translate from the foreign language into English" as required by the regulation at 8 C.F.R. § 103.2(b)(3). The AAO notes that the translator spelled her name differently on each of the four translations as "[redacted]" "[redacted]" "[redacted]," and "[redacted]." The multiple spellings of the translator's own name and the various grammatical, punctuation, and spelling errors throughout the translations undermine the competency and credibility of the translator. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The petitioner asserts that the four reference letters submitted on motion meet the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii) – (vii), (ix), and (x). For the reasons discussed below, the AAO will uphold the previous decisions of the director and the AAO.

I. ANALYSIS

A. Evidentiary Criteria[2]

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

The petitioner did not claim eligibility for this regulatory criterion at the time of filing the petition, in response to the director's Notice of Intent to Deny (NOID), on appeal, or in her previous motion. The petitioner now asserts for the first time in these proceedings that she meets this criterion. The petitioner submits an August 24, 2011 letter from [redacted] stating: "In 2004 the work of [the petitioner] have been choosen [sic] for participation at prestigious international exhibition of graphic works 'Small Size Work' where her work in mezzotint technique got a Second Prize." The petitioner also submits a November 16, 2011 letter from [redacted] stating: "The works of [the petitioner] more than once got prizes places [sic] at art shows. In 1991 her painting got the 1-st place at an international exhibitions [sic], organized by belarusian [sic] Union of Arts. In 1992 she awarded The Diploma for excellence and received the value Prize." In addition, the petitioner submits a July 18, 2011 letter from [redacted] stating: "In 1995 and 1996 [the petitioner's] works have been choosen [sic] as the best from hundreds works another [sic] Siberian artists and artists from Far East. The judged exhibitions have been held at Irkutsk Regional Art Museum. In 1996 [the petitioner's] work got the first Place and Best Award . . . ."

Despite the director's issuance of a NOID specifically mentioning that no evidence was submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), the petitioner now submits the preceding evidence in support of the instant motion. With regard to the above evidence submitted for this criterion for the first time on motion, where a service center has requested specific evidence in a NOID, and the petitioner failed to comply with the request, that particular evidence will not be considered on motion. As the petitioner was put on notice of a deficiency in the evidence and was given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner seeks evidence to be considered, she must submit the documents in response to the director's request for evidence. *Id.*

Regardless, rather than submitting primary evidence of her prizes from 1991, 1992, 1995, 1996, and 2004, the petitioner instead submits letters from former acquaintances prepared in 2011 claiming that she received the aforementioned prizes. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence

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

is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The letters from [redacted] and [redacted] do not comply with the preceding regulatory requirements. Further, the petitioner did not submit evidence of the national or international *recognition* of her particular prizes. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's prizes be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's prizes were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

In general, in order for published material to meet this criterion, it must be 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]

On motion, the petitioner points to the letter from [redacted] who states that in 2008 the petitioner authored an article entitled "Mezzotint" in the magazine *Art Council*. The AAO's May 24, 2011 decision has already addressed the deficiencies in this evidence. The petitioner's article in *Art Council* constitutes didactic material written by the petitioner about artistic methods and her own work rather than published material about herself. Further, the petitioner failed to submit documentary evidence demonstrating that *Art Council* qualifies as a professional or major trade publication or some other form of major media. Thus, the material in *Art Council* does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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[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.

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

The petitioner did not claim eligibility for this regulatory criterion at the time of filing the petition, in response to the director's NOID, on appeal, or in her previous motion. The petitioner now asserts for the first time in these proceedings that she meets this criterion. The petitioner points to the letter from [redacted] who states:

> In 1991 [the petitioner] have been invited to join our collective as a teacher of drawing and painting, also same year she forms a part of the Boad [sic], which selected the works of the artists for partipation [sic] at the art shows and judged the works of artist. In 1992 [the petitioner] was the Head of Boad [sic].

Despite the director's issuance of a NOID specifically mentioning that no evidence was submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner now submits the preceding evidence in support of the instant motion. With regard to the above evidence submitted for this criterion for the first time on motion, where a service center has requested specific evidence in a NOID, and the petitioner failed to comply with the request, that particular evidence will not be considered on motion. As the petitioner was put on notice of a deficiency in the evidence and was given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or on motion. *See Matter of Soriano*, 19 I&N Dec. at 764; *see also Matter of Obaigbena*, 19 I&N Dec. at 533. If the petitioner seeks evidence to be considered, she must submit the documents in response to the director's request for evidence. *Id.*

Regardless, rather than submitting primary evidence documenting her participation in 1991 and 1992, the petitioner instead submits a letter from a former acquaintance prepared in 2011 claiming that the petitioner judged the work of artists. As previously discussed, 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. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The letter from [redacted] does not comply with the preceding regulatory requirements. Further, the limited information provided in the letter from [redacted] does not identify the specific works of art judged by the petitioner and the names of the artists whose work she evaluated. Merely submitting a letter claiming that the petitioner served on a board without specifying the work she judged is insufficient to establish eligibility for this criterion. 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). In this instance, the petitioner has failed to adequately document her participation as a judge in 1991 and 1992.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

On motion, the petitioner points to the letters from [redacted] and [redacted] as evidence for this regulatory criterion. 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.] Here, the evidence must be reviewed to see whether it rises to the level of original artistic 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).

[redacted] states:

> Almost 15 years I am teaching the graphic technique at the Art Institute Moscow State Academy named after V. Surikov, faculty of Graphic. The curriculum among the others includes graphic technique: etching, lithograph, linocut, serygraphy [sic]. The technique of mezzotint not included to study. Not many artists work with mezzotint, very complicated labor-intensive technique, that require a high level of skills and huge patient. Some artists use alternative grounding method that more easy. But [the petitioner] create her works in traditional classical technique and she has a great result.
>
> Only a few articles published on that subject and the article "Mezzotint" by [the petitioner] published in our main professional magazine *Council Art* for 2008 is very important for the field. In my work with students I using [sic] the materials from this magazine including the article "Mezzotint" by [the petitioner]. She describe in detail accessibly all technique process in stage, give an advices [sic] how avoid the common mistakes, uncover some secrets of her skill.

[redacted] comments that the petitioner is skilled at utilizing the complicated, labor-intensive mezzotint technique, but there is no documentary evidence showing that the petitioner herself originated the mezzotint printmaking method. 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 certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). F.B. Favorsky also comments that the petitioner published an article entitled "Mezzotint." The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the

petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications 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. Thus, there is no presumption that every published article is a contribution of major significance; rather, the petitioner must document the actual impact of her article. While [redacted] asserts that he has utilized the petitioner's "Mezzotint" article in his graphic technique course, the petitioner has failed to establish the impact or influence of her article beyond [redacted] classroom so as to establish that her article was majorly significant to the field at large. There is no documentary evidence showing that the petitioner's article has significantly impacted the field as a whole or otherwise equates to an original artistic contribution of major significance in the field.

[redacted] states:

> The Republican House of Art Creation where I have been worked as Director for about twenty years in 1970-1990 was the Center of cultural life of the belarussian [sic] capital. There have been held republican and international exhibitions, the different cultural events, rewarding the winners of the art exhibitions.
>
> The works of [the petitioner] more than once got prizes places [sic] at art shows. In 1991 her painting got the 1-st place at an international exhibitions [sic], organized by belarusian [sic] Union of Arts. In 1992 she awarded The Diploma for excellence and received the value Prize. In 1991 [the petitioner] have been invited to join our collective as a teacher of drawing and painting, also same year she forms a part of the Boad [sic], which selected the works of the artists for partipation [sic] at the art shows and judged the works of artist. In 1992 [the petitioner] was the Head of Boad [sic].

Smagin Vitaly states:

> I know [the petitioner] as talented artist more than 20 years. I am a member of the Union of Art USSR from 1975 and Charman [sic] of Irkutsk Art Fund from 1993. [The petitioner] began exhibited [sic] her works from 1987 at the Gallery of Irkutsk Art Museum - Department of Siberian Art - 23 Karl Marks street. There I met her, I liked her mixed media works created from natural material.
>
> In 1995 and 1996 [the petitioner's] works have been choosen [sic] as the best from hundreds works another Siberian artists and artists from Far East. The judged exhibitions have been held at Irkutsk Regional Art Museum. In 1996 [the petitioner's] work got the First Place and Best Award - travelling [sic] by the ship along the Lake Baikal visiting

> Island Olhon and small bay Peschanaya. Financing have been provided by Irkutsk Art Fund. All of us, who know [the petitioner], who exhibited with her we proud and glad that she exhibited her works in different countries.

The preceding letters from [redacted] and [redacted] comment on the petitioner's prizes and awards, but this evidence has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). As previously discussed, the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. The letters from [redacted] and [redacted] also discuss the petitioner's activities in the field (such as appointments and exhibitions), but they fail to specify any original contributions made by the petitioner, let alone original contributions of major significance in the field. [redacted] solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian* at 1036.

[redacted] states:

> [The petitioner's] art show that took place at the gallery MD-ART from February, 2 [sic] through March 2, 2009 had an incredible success. The attendance of the exhibition was great, also it was a very good commercial success - many works of [the petitioner] were sold.
>
> At the exhibition were presented paintings in oil, pastel, watercolor and sculpture works in plaster, bronze and terracotta. All these works have been created by [the petitioner] for last 20-25 years her creative activity. It was a personal exhibition of [the petitioner], only her works were on display, nobody else exhibited at the Gallery MD-ART that time. All the works marked "Sold" in the "Price List" belong to [the petitioner].

[redacted] discusses an exhibition of the petitioner's work at the MD-ART Gallery in 2009, but he fails to specifically identify any original contributions made by the petitioner or provide specific examples of how those contributions influenced the field at large. The AAO notes that the regulations contain a separate criterion regarding the display of one's work at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). The AAO will not presume that evidence relating to or even meeting the display criterion is presumptive evidence that the petitioner also meets this criterion. Again, to hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, there is no documentary evidence showing that the artwork displayed by the petitioner at the MD-ART Gallery equates to original artistic contributions of "major significance" in the field.

The opinions of the petitioner's references are not without weight and have been considered above. 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 reference letters 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 795-796; *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"). Thus, the content of the references' 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 that one would expect of an artist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential or has otherwise risen to the level of original artistic contributions of major significance in the field, the AAO cannot conclude that she meets this regulatory criterion.

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

The petitioner did not claim eligibility for this regulatory criterion at the time of filing the petition, in response to the director's NOID, on appeal, or in her previous motion. The petitioner now asserts for the first time in these proceedings that she meets this criterion. The petitioner previously submitted evidence showing that she authored two articles in the magazine *Art Council.* As previously discussed, the petitioner failed to submit documentary evidence demonstrating that *Art Council* qualifies as a professional or major trade publication or some other form of major media. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of *scholarly* articles in the field." [Emphasis added.] Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, the record lacks evidence demonstrating that the petitioner's articles were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly."

In addition to the preceding deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner's authorship of scholarly articles in "professional or major trade *publications* or other major *media*" [emphasis added] in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are 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). Therefore, even if the petitioner were to establish that her two articles in *Art Council* meet the elements of this regulatory criterion, which they do not, 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 more than one publication.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

The AAO reaffirms its appellate finding that the petitioner's evidence meets the plain language requirements of this regulatory criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On motion, the petitioner points to the letter from [redacted] as evidence for this regulatory criterion. The letter from [redacted] discusses an exhibition of the petitioner's work at the MD-ART Gallery in 2009, but it does not specify the petitioner's actual remuneration. The petitioner's motion does not include documentary evidence (such as financial records or income tax forms) showing her earnings for any specific time period. As previously discussed, 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. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence demonstrating she "has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field*." [Emphasis added.] The petitioner offers no basis for comparison showing that her remuneration was significantly high in relation to that of other artists. *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 documentation submitted by the petitioner fails to demonstrate that she has received a high salary or other significantly high remuneration in relation to others performing similar work. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

On motion, the petitioner points to the letter from [redacted] as evidence for this regulatory criterion. As previously discussed, the letter from [redacted] discusses an exhibition of the petitioner's work at the MD-ART Gallery in 2009. The regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x) focuses on volume of sales and box office receipts as a measure of "commercial

successes in the performing arts." The petitioner's field, however, is in the visual arts, not in the performing arts. Nothing in [redacted] letter indicates that the petitioner has achieved "commercial successes in the performing arts." In this instance, the petitioner has failed to submit documentary evidence of "sales" or "receipts" showing that she has achieved commercial successes in the performing arts. Accordingly, the petitioner has not established that she meets this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

II. CONCLUSION

The petitioner has not submitted qualifying evidence under at least three evidentiary categories at 8 C.F.R. § 204.5(h)(3). Accordingly, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is dismissed, the previous decisions of the director and the AAO are affirmed, and the petition remains denied.