

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: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

The petitioner seeks classification as an “alien of extraordinary ability” in the arts as a dancer, 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 29, 2012. On March 7, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on June 12, 2012. On appeal, the petitioner submits a brief with additional documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

## I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

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

The petitioner provided evidence that she received a National Scholarship for Young Artists. The director acknowledged that the petitioner was the recipient of a scholarship award submitted under the regulation at 8 C.F.R. § 204.5(h)(3)(i), but concluded that the scholarship failed to satisfy the plain language requirements of this criterion as it was not a nationally or internationally recognized prize or an award for excellence in the field of endeavor. In reaching this conclusion, the director noted that it was issued to students early in their careers and excluded established professionals. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

*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 affirms the director's 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 affirms the director's 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 her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final

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

requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner’s work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner initially claimed that her performances, choreography, and her teaching were her contributions in her field, noting that she has received positive reviews in the media. The director concluded that the petitioner failed to establish how performances at various venues constituted a contribution of major significance.

Regarding the petitioner’s claims that published material about her demonstrates her eligibility under this criterion, counsel provided a list of numerous articles relating to the petitioner or articles that mention her. The regulations contain a separate criterion regarding published material about the petitioner. 8 C.F.R. § 204.5(h)(3)(iii). The AAO will not presume that evidence relating to or even meeting the published material 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 published material and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. Published news articles are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Cf. Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court 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. *See also Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (rejecting an interpretation of 8 C.F.R. § 204.5(h)(3)(vii) that would “collapse” that criterion into 8 C.F.R. § 204.5(h)(3)(viii)). To hold that published material about the petitioner creates a presumption that she meets not only 8 C.F.R. § 204.5(h)(3)(iii) but also 8 C.F.R. § 204.5(h)(3)(v) would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Thus, there is no presumption that every published article documents a contribution of major significance in the field; rather, the petitioner must document the actual impact of the articles.

The articles in the record describe the petitioner’s numerous performances in several countries; some even describe original contributions such as her personal choreography or ballets that she composed. These articles do not, however, describe how any of the petitioner’s original contributions in her field have resulted in a significant impact in her field as a whole, rather than to festivals or performances. Another commonality among many of the articles describes how the petitioner has spread awareness of Kathak dance to countries outside of India. Promoting awareness of a cultural dance through performance falls short of establishing original contributions of major significance in the petitioner’s field as it does not demonstrate that her field has been significantly impacted by the performances.

In light of the above, the petitioner has not submitted qualifying evidence that satisfies the plain language requirements of this criterion.

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

The director also acknowledged the petitioner performed dances at several venues under the display criterion at 8 C.F.R. § 204.5(h)(3)(vii), but concluded that the performances were not displays at artistic exhibitions or showcases. Thus, the director concluded that she had not met the requirements of this criterion. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."<sup>3</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director concluded that the evidence on record failed to demonstrate that the roles the petitioner performed for the Indian Council for Cultural Relations (ICCR) and the Anila Sinha Foundation (ASF), a Chicago-based non-profit, were leading or critical. The director did not address whether the ICCR or the ASF has a distinguished reputation.

On appeal, counsel asserts that the director did not give sufficient weight to the letters from [REDACTED] and [REDACTED]. Counsel also reiterates previous assertions that the published material is relevant to this criterion.

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<sup>3</sup> See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on November 27, 2012, a copy of which is incorporated into the record of proceeding.

Regarding the petitioner's role at ASF, counsel's appellate brief states: "She is responsible for teaching and training the students. She is critical to ASF in that she serves to further the goals of ASF which is to bring Kathak dance and culture to the community." Counsel's appellate brief failed to identify the evidence to support this statement. 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).

The published material and a program for the Second International Kathak Festival in Chicago identify the petitioner as an artistic director for ASF. [REDACTED] and Director of ASF, confirms that the petitioner has served as the Artistic Director, Dance Choreographer and Teacher at ASF since 2005. The petitioner has not established how her role in those capacities has been critical to ASF. For instance, while [REDACTED] asserts generally that the petitioner's contributions to ASF have "made it one of the premier Kathak schools in the Midwest in US," she does not explain how ASF, incorporated in 1998 and sponsor of the First International Kathak Festival in 2004, has progressed since the petitioner began working there in 2005.<sup>4</sup> USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[REDACTED] Director of Programs and External Relations at the International House at the University of Chicago, stated that the petitioner "has been a tremendous asset to the younger generation of artists and students in the Chicago area." [REDACTED] does not, however, reference a leading or critical role that the petitioner has performed for ASF. [REDACTED] appears to only have firsthand knowledge of the petitioner's performances on behalf of ASF that occurred at the University of Chicago's Global Voices Performing Arts Program. Moreover, [REDACTED] merely asserts that the petitioner participated in the Global Voices Program and does not explain her role for that program. The letter from [REDACTED] is insufficient to establish that the petitioner has satisfied the regulatory requirements based on her role for ASF.

The petitioner contends that ASF's distinguished reputation is evident from published articles about ASF-sponsored performances. That the media has reviewed ASF-sponsored performances and events does not address the reputation of the organization. Instead, the petitioner must show that the ASF has built a reputation marked by eminence, distinction, excellence, or an equivalent reputation. Counsel had also previously claimed that ASF enjoys a distinguished reputation because "ASF is the only Kathak organization that has a direct link to a Kathak school in India." Once again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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. Regardless, while this assertion, if true, demonstrates a unique trait of ASF, it does not follow that ASF enjoys a distinguished reputation. It remains, all of the programs for ASF performances reflect local

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<sup>4</sup> The program for the Second International Kathak Festival indicates ASF organized the first one in 2004 and that it was "a great success."

performances in Chicago, with the record containing one review of a show in Wisconsin. In addition, the media coverage of ASF events appears in the *Indian Reporter*, the *Indian Tribune*, the *India Post*, *Narthaki.com*, *Asianwisconsin.com*, publications for which the petitioner submitted no circulation data. While the petitioner did submit one 2009 article in *The Hindu*, that article only mentions ASF in passing.

██████████ of Anthropology and the Social Sciences at the University of Chicago, speaks to the role the petitioner performed at ICCR, but he fails to indicate whether he previously worked with the petitioner, or how he came to possess knowledge of her performance for an entity of the Indian government. In fact, ██████████ only relies on his experience with the University of Chicago, rather than indicating that he holds a sufficient knowledge of ICCR in India. As a result, the petitioner has not shown ██████████ account of the petitioner's role performed for ICCR derives from firsthand knowledge. This account therefore has diminished probative value. Cf. 8 C.F.R. § 204.5(g)(1)(evidence of experience shall consist of letters from the employer).

The letter from ██████████ Joint Secretary and Deputy Director General at ICCR, merely indicates that the petitioner was an empanelled Kathak artist with ICCR since 1994 and that the petitioner has performed abroad on behalf of ICCR. This letter fails to demonstrate the petitioner performed in a leading or critical role for ICCR. Specifically, ██████████ fails to explain how the petitioner's position at ICCR fits within the overall hierarchy of ICCR or how the petitioner impacted ICCR as a whole.

Regarding the petitioner's role at ICCR, the petitioner asserts she satisfied this portion of the criterion's requirements by traveling to various African countries during the celebration of the semicentennial of India's independence. While the petitioner did provide evidence to demonstrate that she served as an empanelled artist on ICCR's behalf outside of India, she has not provided evidence that this constituted a leading or a critical role for ICCR.

At the time she filed the petition, the petitioner provided information from *Wikipedia* regarding ICCR. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>5</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Even if the AAO did consider this evidence probative, it states only that ICCR "empanels

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<sup>5</sup> Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on December 11, 2012, a copy of which is incorporated into the record of proceeding.

performing artists who are proficient in their field. Empanelled artists are added to a reference list, and may receive sponsorship from the Council when they perform internationally.” Nothing in this material suggests every empanelled performer serves in a leading or critical role for ICCR.

In view of the foregoing, the petitioner has not submitted evidence that satisfies the regulatory requirements of 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

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

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<sup>6</sup> 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).

  
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**ORDER:** The appeal is dismissed.