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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 10 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 performing arts, as a perch pole balancing performer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the 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; H.R. 723 101st Cong., 2d Sess. 59 (1990); 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.

On appeal, the petitioner submits a brief with supporting documentation. 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 following ten categories of evidence.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(iii) 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;

(iv) 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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

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

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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 reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a

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).

new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria²

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

The petitioner submits a single award as evidence under this criterion. The director determined the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "prizes" and "awards" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.³ As the petitioner has not submitted awards or prizes, in the plural, she cannot meet the plain language requirements of this criterion.

In reference to the award, the petitioner presents a photograph, a newspaper article from [REDACTED] in a foreign language, and the article's translation into English as evidence of the petitioner's receipt of the [REDACTED] – the circus professional's highest award" issued by a "jury that had been put together by the Argentine Union of Variety Performers." It is not apparent which organization issued the award, or that this award was nationally or internationally recognized. The article's translation lacks the name of the organization that issued the award. The petitioner provides a web site printout from [REDACTED] enjoyed a daily circulation of 560,000 copies. This web site printout provides no information relating to the distribution data of this newspaper which might establish the paper's reach was national or international rather than regional. Most importantly, the information reflects the circulation in 2002, rather than in 1989, the

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

³ 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).

year in which the article appeared. Thus, the petitioner may not rely on this article in *Clarín* to establish that this award is nationally or internationally recognized. As a result, this award is not a qualifying one, and the petitioner has not established that she meets the plain language requirements of this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that as part of “the troupe for [redacted], [the petitioner] qualifies as a *de facto* member of an association of outstanding [redacted] performing artists.” This circus is the only “membership” claimed by the petitioner. The director determined the petitioner failed to meet this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of “membership in associations” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. As previously stated, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation.⁴ As a result, the petitioner cannot meet the plain language requirements of this criterion. However, the AAO will still evaluate if the claimed *de facto* membership meets the plain language requirements of this regulatory criterion.

As evidence under this criterion, the petitioner submits web page printouts of the circus acts performing for [redacted]. This printout provides a brief explanation of those acts which were performing in Las Vegas without any information related to memberships. While it is possible to be a member of a performing group, this colloquial use of the word “member” should not be construed to mean that a circus act is an association with a membership of performers as contemplated by the regulation. The plain language of the regulation requires more than a single achievement, such as an audition for admittance. The individual must establish outstanding achievements, in the plural, prior to acceptance to the association. The petitioner fails to provide documentary evidence of the two regulatory requirements specific to this criterion: that the association requires outstanding achievements of its members as a condition of admittance, and that admittance is judged by nationally or internationally recognized experts in the field.

The petitioner failed to submit evidence to establish that [redacted] constitutes an “association” which has members admitted as anticipated by the regulation. In the alternative, if the AAO were to accept [redacted] as a qualifying association under the regulation, the petitioner provides no

⁴ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12; *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (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).

evidence of the membership requirements for this association. The AAO will not presume exclusive membership requirements from the general reputation of a given association. As the record does not contain the bylaws or other official documentation of the association's membership criteria, the AAO cannot evaluate whether the petitioner's memberships are qualifying. Thus, the petitioner has not established that she meets this criterion.

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

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

The petitioner submits several foreign language newspaper articles, translations of these articles into English, and English language articles as evidence under this criterion. Several of the foreign language documents are not accompanied by an English translation and will not be considered or discussed within this decision as these articles do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which requires certified translations of foreign language documents. The director determined the petitioner failed to meet this criterion.

The title of the first foreign language article is, [REDACTED]. [REDACTED] The plain language of this criterion requires the title, date and author of any document, which if in a foreign language, must be incorporated within the translation. The translation of this article does not contain the article's date, nor is it signed by the translator. The translation does indicate, "/electronic signature/," however, this form of certification is insufficient. As a consequence, this article will not contribute to the petitioner meeting the plain language requirements of this criterion and the AAO will not considered consider this article during this decision's final merits determination.

The petitioner submits the same article discussed under the lesser awards criterion from [REDACTED] a [REDACTED]. This decision previously discussed the reasons why [REDACTED] is not considered a national or international publication, and it is also not considered a qualifying publication or major media under this regulatory criterion for these same shortcomings, i.e., the information about [REDACTED]

reflects the newspaper's circulation statistics in 2002 rather than in 1989, when the article appeared in *Clarín*.

The petitioner provides a translation of the article, [REDACTED]. [REDACTED] The translation of this article does not bear the author's name, although the author is clearly represented on the foreign language document. The regulation requires not only the title, date, and any necessary translation of the evidence, but it also requires the author of the material. See 8 C.F.R. § 204.5(h)(3)(iii). The petitioner failed to provide a translation with the article's full text; she only provided a summary translation containing the portions of the article relevant to her. The regulation requires that, "Any document containing foreign language submitted to USCIS shall be accompanied by a *full* English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." (Emphasis added.) 8 C.F.R. § 103.2(b)(3). As a result, summary translations are not considered sufficient to meet the requirements of the regulation. Since this is a summary translation, it does not constitute evidence. This article will not satisfy the plain language requirements of this regulatory criterion and the article will not be considered during this decision's final merits determination.

The evidence titled, "[REDACTED]" at the [REDACTED] appears in the newspaper *La Capital*. This is actually the caption of a photo rather than an article that is about the petitioner and her work in the field. A caption does not rise to the level of published material. Additionally, the only evidence related to *La Capital's* circulation data provided is from the website *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁵ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). As such this evidence does not meet the plain language requirements of this criterion.

The article titled [REDACTED] has less than one paragraph within the article related to the petitioner. The plain language of this criterion requires that the published material be about the petitioner and her work in the field, which this article clearly is not. Additionally, the petitioner only provides a translation of the portion of the article that is relevant to her. The AAO previously noted

⁵ 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, [accessed on December 13, 2011, a copy of which is incorporated into the record of proceeding.]

that summary translations of an article are not acceptable evidence under the regulation and will not be considered in this decision. *See* 8 C.F.R. § 103.2(b)(3).

The article titled, [REDACTED]. This article appears to contain a photograph of the petitioner performing. However, the caption for this photograph indicates the performer's name is [REDACTED]. The record does not contain any evidence that the petitioner has used this name as an alias. Furthermore, as previously noted, a caption does not rise to the level of published material. Additionally, this caption is followed by an article titled, [REDACTED] packs big thrills under the big top." The petitioner failed to provide the full article and the evidence on record only contains a small portion of the article on this photocopied document. Consequently, the AAO is unable to analyze the content to determine the article's applicability to the published material criterion. Notwithstanding the above noted defects, the petitioner provides the circulation data of this newspaper.

In reference to this article appearing in a form of major media, the petitioner submits the circulation data of *The Daily Review*. According to a 2006 Gallup study of media usage and consumer behavior, this newspaper has a total daily review of 152,872 households. The petitioner has failed to establish the circulation statistics of other newspapers to compare with the circulation data of *The Daily Review*, and she has consequently failed to establish the *The Daily Review* is a form of major media. The petitioner also provides no information related to the distribution data of the *The Daily Review* outside of the California cities of Hayward, Castro Valley, and San Lorenzo to establish this published material has a national rather than a regional reach. Publications with only a regional reach are not considered to be major media and the petitioner has not established this publication is a professional or major trade journal as required by the regulation.

In regard to the remaining articles, the petitioner failed to provide any information relating to the publications to establish if they are professional or major trade publications or if they could be considered major media. As a result, these articles will not satisfy the plain language requirements of this criterion.

The final form of evidence the petitioner claims is related to this criterion is her appearance on a television show, *Showmatch*. On appeal, the petitioner provides evidence relating to the show, however she failed to provide evidence that she appeared on the show. Even if this evidence were to indicate the petitioner appeared on *Showmatch*, which it does not, it originates from *Wikipedia*. This decision already discussed the lack of reliability of the information from *Wikipedia*. The petitioner provided a foreign language letter on Cirque XXI letterhead accompanying the initial petition which relates to this show, however she failed to provide a certified translation into English in accordance with 8 C.F.R. § 103.2(b)(3). As a result, the petitioner failed to establish her appearance on this show.

Based on these numerous deficiencies and shortcomings, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

Counsel's appeal brief indicates the petitioner's contributions of major significance are articulated through several letters from industry experts. The director determined the petitioner failed to meet this criterion.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original, but also of major significance. The AAO must presume that the phrase "major significance" is not superfluous and, thus, that 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). To be considered a contribution of major significance in the field of the performing arts, it can be expected that the petitioner can produce evidence of her influence and accomplishments in her field.

The first letter is from [REDACTED] identifies the petitioner's performance capabilities she displays for two [REDACTED] shows as well as her skills, which "are a very important part of our customer retention strategy." However, he fails to identify any specific contributions the petitioner has made in her field of endeavor.

The next letter cited in counsel's appeal brief is from [REDACTED], President of Showmark Entertainment group. [REDACTED] focuses primarily on the petitioner's unique act and the amount of time required to develop into a performer with her skillset. This letter's author, much like the previous letter, failed to specifically identify any contributions of major significance the petitioner has made to her field.

The remaining letters, as counsel puts forth, "indicate the high regard that people in the industry hold for [the petitioner]." However, these letters do not stipulate the contributions the petitioner has made to her field as counsel asserts. Additionally, these letters lack specificity of how the petitioner's achievements have affected her field. While such letters are important in providing details about the petitioner's role in various organizations, vague, solicited letters 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).⁶

The regulation requires original contributions of major significance in the field. While the petitioner has established she has made original contributions to her field, such as her act, her achievements and accomplishments, as of the priority date, fail to rise to the level of being considered of "major"

⁶ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

significance. As a result, the petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

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

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

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

This criterion anticipates a petitioner will establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts. These sales and box office receipts are a reflection of the petitioner's commercial success relative to others involved with similar pursuits in the petitioner's field of the performing arts.

Within the initial filing the petitioner did not claim eligibility under this criterion, however, on appeal counsel now claims that the petitioner also meets the plain language requirements of this criterion. As the petitioner made no prior claim to qualify under this criterion, the director did not issue a determination of her eligibility.

This criterion anticipates a petitioner will establish eligibility through the volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts. These sales and box office receipts are a reflection of the petitioner's commercial success relative to others involved with similar pursuits in the petitioner's field of the performing arts.

The petitioner submits contracts with entertainment companies as evidence under this criterion. Counsel states the following in the appeal brief:

In particular, [REDACTED] is an internationally known hotel and casino...[and] in order to appeal to its guests, [REDACTED] offers circus acts in which there is no extra charge. At the same time, these circus acts are crucial to the commercial success of the hotel. As part of the largest permanent circus in the world, Petitioner plays a key role in supporting the hotel and its business and is one of the reasons behind the hotel's success and international reputation.

While counsel plainly states the petitioner plays a key role in the success of the businesses in which she works, no evidence is contained in the record to establish she, herself, has either enjoyed commercial successes in the performing arts, or that her employer's successes may be directly attributed to the fact that the petitioner was taking part in a particular act or performance. The petitioner has failed to provide evidence establishing that the petitioner is featured in any promotional material which might lend credence that the success of a particular show in which the petitioner performed can be attributed to her.

Based on the petitioner's failure to provide evidence of sales or box office receipts, the petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion and she has failed to establish that she meets the plain language of this criterion.

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20.

In the same manner that the petitioner's award is insufficient to meet the plain language requirements of the regulation, a single award which has not garnered any national or international recognition does not represent a record of recognition or achievement that represents sustained acclaim or rises to the level of being in the top percentage of the petitioner's field.

Being a member of [REDACTED] while inconsistent with the type of membership anticipated by the regulation, is also not the caliber of "membership" that might elevate the petitioner into the that small percentage at the top of her field. While the petitioner is employed in a creative and competitive field, she has not submitted evidence of sustained acclaim in the field or that she has attained the status as one of that small percentage who have risen to the very top of their field of endeavor among other performers.

Published material that either appears in local or regional newspapers, that is not about her and in some cases does not even mention the petitioner, or that is not accompanied by qualifying translations will not

serve to establish she has achieved sustained national or international acclaim or that she is within the small percentage who have risen to the very top of her field.

Letters from former or current employers, and from the petitioner's collaborators that fail to identify any measureable contribution to the petitioner's field of endeavor will not serve to establish she has made contributions consistent with achieving sustained national or international acclaim or the status as one of that small percentage who have risen to the very top of their field of endeavor. The petitioner's failure to provide evidence that her employer's claimed commercial success is significantly attributable to her is not a level of success symbolic of national or international acclaim nor does it demonstrate the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a circus performer, relies on one award, which has not received national or international recognition, her membership which is fundamentally equal to being an employee of [REDACTED] published material about her which does not appear in major media, indeterminate contributions of significance to her field, and rather than her own commercial successes, her contributions toward her employer's commercial success, which is similar to the contribution of any performer. This hardly distinguishes the petitioner from other circus performers, and the AAO will not narrow the petitioner's field of circus performers to perch pole balancing performers with her level of training and experience. Thus, it appears that the highest level of the petitioner's field is far above the level she has attained.

III. Conclusion

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

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

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.