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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

DATE: **DEC 21 2011**

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

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

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate 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.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will uphold the director's decision.

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.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting 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 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 *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 28, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a talent agent and general manager of a talent agency. At the time of filing, the petitioner was employed as the [REDACTED]

[REDACTED] The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).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 initially submitted a list of her clients' awards in the film industry. On appeal, the petitioner submits a list of her clients' awards in the film and modeling industries during the last decade. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes or awards received by individuals other than the petitioner herself do not meet the plain language requirements of the regulation. The AAO finds that the director's analysis was consistent with the relevant regulatory language set forth in the criteria at 8 C.F.R. § 204.5(h)(3). "[N]either USCIS nor an AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." See *Kazarian v. USCIS*, 596 F.3d at 1121 (citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008)). Awards received by the petitioner's clients in the film and modeling industries do not equate to her receipt of those prizes.

The petitioner's supplement to her appeal received by the AAO in August 2010 includes a June 9, 2006 certificate from the China-American Cultural and Art Committee of the USA International Business Association (UIBA) designating her as an honorary member. The certificate states:

For strengthening China-American cultural exchanges and cooperating further, promote our country the fast development of the cultural industry, encourage the contribution you have to do to the Chinese cultural industry, the China-American cultural and art committee of UIBA decides confer the China-American cultural and art committee of UIBA honor member title on you, delivering this certificate especially.

[REDACTED] trophy listing four of her clients and the [REDACTED] list for that year posted at <http://yule.sohu.com/s2007/2007forbesaward/>. With regard to the preceding awards, although the documentation supplementing the petitioner's appeal contains an August 2, 2010 "Certificate

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

of Accuracy” from the translator stating that “I have made the attached translation from the annexed document in the Chinese language and hereby certify that the same is a true and complete translation,” it is unclear which of the documents, if any, to which the translator certification pertains. The submission of a translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that 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.

The AAO notes that on December 29, 2009, the director issued a Notice of Intent to Deny (NOID) specifically informing the petitioner that the record lacked evidence showing that she has received a nationally or internationally recognized prize or award. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the immigrant visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the AAO will not consider the petitioner’s certificate from the China-American Cultural and Art Committee of UIBA and her “Year 2006 Forbes Chinese Celebrities Top 100 List” trophy in this proceeding. Regardless, the petitioner did not submit evidence of the national or international *recognition* of her particular awards, such as national or widespread local coverage of the awards in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner’s awards 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.

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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

As previously discussed, the petitioner's supplement to her appeal includes a June 9, 2006 certificate from the China-American Cultural and Art Committee of UIBA designating her as an honorary member. There is no documentary evidence (such as bylaws or rules of admission) showing that the preceding association requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

On appeal, the petitioner submits a May 6, 2010 notice informing her that she was accepted for membership in the Chinese Association of Women Entrepreneurs (CAWE). Counsel states: "Also we were informed that [the petitioner] was recently admitted by most prestigious [REDACTED]. Due to time limit, papers were not issued yet to [the petitioner]." The petitioner failed to submit documentary evidence of her membership in the [REDACTED]. 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 petitioner's supplemental submission received by the AAO in August 2010 includes her membership credential for the [REDACTED] with an issuance date of June 9, 2010. The petitioner also submits her membership credential for the [REDACTED] but there is no documentary evidence showing that she held membership in the [REDACTED] at the time of filing the petition on March 28, 2008. A petitioner must demonstrate her eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider the petitioner's memberships in the [REDACTED] and the [REDACTED] in this proceeding. Further, the AAO notes that the director's December 29, 2009 NOID specifically informed the petitioner that the record lacked evidence of her association memberships. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the immigrant visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. As previously discussed, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. at 764; *Matter of Obaighena*, 19 I&N Dec. at 533. Moreover, with regard to the preceding memberships and the accompanying material about the associations, although the petitioner's appellate and supplemental submissions contain a May 21, 2010 and August 2, 2010 "Certificate[s] of Accuracy" from the translator stating that "I have made the attached translation from the annexed document in the Chinese language and hereby certify that the same is a true and complete translation," it is unclear which of the documents, if any, to which the translator certifications pertain. As previously noted, the submission of a translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, there is no evidence showing that the [REDACTED] and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts 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 primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted an interview of her entitled “[redacted]” appearing in the September 2003 issue of [redacted]. The petitioner also submitted an article entitled “[The petitioner]: [redacted]” but the name of the publication and the date of the article were not provided as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner’s initial evidence included a published interview of herself discussing the “[redacted]” but the name of the publication, its date, and the author of the material were not provided as required by the plain language of this regulatory criterion. The petitioner also submitted a [redacted] newspaper, but the title of the article and the author of the material were not provided as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner’s initial submission also included a [redacted] [The petitioner]” posted at [redacted] and [redacted] [the petitioner]” posted at [redacted] but the author of the articles was not identified as required by this regulatory criterion. The petitioner also submitted a photograph of herself published in [redacted]. The plain language of this regulatory criterion requires “published material about the alien” including “the title, date and author of the material.” The photograph of the petitioner does not meet these requirements. The petitioner’s initial evidence also included articles about the petitioner’s clients [redacted] in which they briefly discuss how the petitioner assisted their careers. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be “about the alien.” *See, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

With regard to the preceding articles, the vast majority of them were submitted without full and complete English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, although the petitioner’s initial submission contained a February 1, 2008 “Certificate of

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.

Accuracy” from the translator stating that “I have made the attached translation from the annexed document in the Chinese language and hereby certify that the same is a true and complete translation,” it is unclear which of the documents, if any, to which the translator certification pertains. The submission of a translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, there is no documentary evidence (such as circulation statistics or online readership data) showing that the preceding publications and internet sites qualify as “major trade publications or other major media.”

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

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

The petitioner submitted documentation identifying her as the [REDACTED]. 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).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished “organizations or establishments” 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 submit documentary evidence showing that her role and [REDACTED]’s reputation meet the elements of this regulatory criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

In light of the above, the petitioner has not established that she meets 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 appeal, the petitioner submits bank records from [REDACTED] reflecting a March 26, 2010 personal account balance of [REDACTED] 2010 [REDACTED]. The AAO notes that the director's December 29, 2009 NOID specifically informed the petitioner that the record lacked evidence that she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the immigrant visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. As previously discussed, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. at 764; *Matter of Obaigbena*, 19 I&N Dec. at 533. Further, the preceding bank account balance and real estate appraisal post-date the filing of the petition. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's March 26, 2010 bank account balance and May 18, 2010 real estate appraisal in this proceeding. Nevertheless, the preceding documents fail to demonstrate that the petitioner has received a high salary or other significantly high remuneration for services, in relation to others in the field. *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).

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

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

The AAO will next conduct 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the

present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (viii), and (ix).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the awards submitted by the petitioner do not rise to the level of nationally or internationally recognized awards for excellence in the field. Further, the English language translations of the awards submitted by the petitioner do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the petitioner has failed to establish that her awards are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the petitioner's memberships in the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the field. Moreover, the English language translations of the membership documents submitted by the petitioner do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner has not established that her memberships are indicative of or consistent with sustained national or international acclaim, or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including a date or an author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. Further, the English language translations of the articles submitted by the petitioner do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner has failed to demonstrate that the published material about her is indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has failed to establish that her role as [REDACTED] is indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), there is no evidence demonstrating that petitioner has commanded a high salary or other significantly high remuneration in relation to others in her occupation, or that her salary or remuneration places her among that small percentage who have risen to the very top of the

field. The petitioner has not established that her earnings level in China is indicative of or consistent with sustained national acclaim.

In this matter, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a talent agent and general manager of a talent agency, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

C. Continuing work in the area of expertise in the United States

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. The petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a personal statement detailing plans on how she intends to continue working in the United States. Accordingly, the petitioner has not submitted "clear evidence" that she will continue to work in her area of expertise in the United States as required by the regulation at 8 C.F.R. § 204.5(h)(5).

IV. 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 does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Further, the petitioner has not submitted clear evidence demonstrating that she will continue to work in her area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043,

aff'd, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 appeal is dismissed.