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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**

[Redacted]

B2

DATE:

JUL 23 2012

Office: TEXAS 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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, 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 October 21, 2010. On November 4, 2010, the director served the petitioner with a notice of intent to deny (NOID). After receiving the petitioner’s response to the NOID, the director issued his decision on December 20, 2010. On appeal, the petitioner submits a brief with no new documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his 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.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not 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.*

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. Standard of Proof and Totality of the Evidence

Counsel's appellate brief indicated that the submitted evidence demonstrated that it was more likely than not that the petitioner qualified for the instant classification. The record does not support counsel's assertion that the director held the petitioner's evidence to an elevated standard beyond that which is required by most administrative immigration cases, the preponderance of the evidence standard of proof. This standard is outlined in *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), which indicated that in evaluating evidence, USCIS must "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). The *Chawathe* decision also stated:

[T]he "preponderance of the evidence" standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation's eligibility as an "American firm or corporation" under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

Matter of Chawathe, 25 I&N Dec. at 375 n.7. Using this standard, the AAO concurs with the director's ultimate conclusion that the evidence does not establish the petitioner's eligibility.

B. Evidentiary Criteria²

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to the event. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

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

The petitioner provided an Internet printout from his own website of a photograph purportedly of the petitioner containing a caption that indicated the petitioner received the journalist of the year award, a second Internet printout from his own website listing three awards the petitioner allegedly received, a letter from [REDACTED] that indicated the petitioner received the best journalist of the year award, a certificate dated December 12, 2008, a letter from [REDACTED], and a letter from [REDACTED]. The director determined the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion for the reasons outlined below.

First, the petitioner has not established how an award for journalism is an award for excellence in the petitioner's current field of endeavor, screenwriting and producing. Moreover, the captioned photograph and list of awards originating from the petitioner's own website constitute self-promotional material. This evidence is not accompanied by any additional corroborating evidence. USCIS need not rely on the self-promotional material of the petitioner. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Regarding the undated letter from [REDACTED] indicated that the petitioner received the [REDACTED] [REDACTED] for his column titled, [REDACTED]. However, the petitioner failed to provide the actual award as evidence. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. There is no primary evidence demonstrating the petitioner received the [REDACTED]. In this case, while the petitioner submitted a letter from a colleague confirming the receipt of the award, the petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained.

Regardless, the verification letter that the petitioner provides is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the petitioner is presumed ineligible pursuant to 8 C.F.R. § 103.2(b)(2). As such, the AAO will not consider the above listed evidence regarding the petitioner's awards as it does not conform to the regulatory requirements.

The December 12, 2008, certificate indicated that the petitioner "was honored with [REDACTED] for being the author of the script and for being the General coordinator of the Show . . . during 2008 staging more than three hundred functions." (Capitalization in the original.) This certificate failed to indicate the name of the award that the petitioner received. Additionally, the petitioner failed to provide evidence that this honor enjoyed national or international recognition. The March 13, 1994, letter from [REDACTED] congratulated the petitioner for his work on a mini-series, [REDACTED] which purportedly won the [REDACTED] as the mini-series of the year. The petitioner failed to provide primary evidence of this award, and pursuant to 8 C.F.R. § 103.2(b)(2), this evidence is insufficient to demonstrate that the petitioner meets the plain language requirements of this criterion. Regarding the July 2010 letter from [REDACTED], the letter's author did not indicate any award that the petitioner may have received. The letter merely indicated that the author has known the petitioner for 25 years and that the petitioner has been the author of soap operas and that he has also left his mark on literature.

Based on the foregoing, the AAO departs from the director's favorable determination as it relates to this criterion. As such, the petitioner has not submitted evidence that 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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. As the petitioner does not contest the director's findings relating to this criterion on appeal, the AAO concurs with the director's findings.

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 satisfy. 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 he 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 or international 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 provided numerous articles in both the English and a foreign language. The director determined that the petitioner failed to meet the requirements of this criterion. Within counsel's appellate brief, she indicated that detailed information was submitted for each form of evidence submitted under this criterion.

While the petitioner did provide more evidence in response to the NOID, most of the evidence submitted lacked corroborating evidence to demonstrate that the published material appeared in a professional or major trade publication or other major media. Without such required evidence, the petitioner cannot demonstrate that he has satisfied this criterion's plain language requirements. The evidence in petitioner's response to the director's NOID relates to [REDACTED]

Regarding the evidence relating to [REDACTED], the subject of the article is a soap opera rather than the article being about the petitioner and relating to his work in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring evidence about the alien's work). Additionally, the petitioner provided self-promotional material from elnuevodia.com reflecting the circulation data of the paper. This evidence cited to and indicated that the circulation data was obtained by what appears to be an auditing report, but the petitioner failed to provide independent evidence from the source of this auditing report to demonstrate the independent nature of the data. USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Furthermore, while the petitioner provided less than sufficient evidence of this publication's circulation data, he has also failed to provide the circulation data of similar newspapers to compare with the circulation statistics of [REDACTED]. The petitioner

also provided no information related to the distribution data of [REDACTED] 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. Consequently, the petitioner has failed to establish that [REDACTED] is a form of major media. As such, the petitioner has failed to document that this evidence meets all the requirements of this criterion.

Regarding the evidence relating to [REDACTED] and to [REDACTED], the petitioner provided evidence originating from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.³ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). As such, the petitioner may not rely upon this evidence to assist in satisfying the regulatory requirements under this criterion.

Regarding the evidence relating to the [REDACTED] the petitioner provided self-promotional material from the publication that provided the storied nature and history of the paper. USCIS need not rely on the self-promotional material of the publisher. See *Braga*, No. CV 06 5105 SJO. Furthermore, in reference to the [REDACTED] being a form of major media, the petitioner failed to establish the circulation data of this publication. The petitioner also provided no information related to the distribution data of the [REDACTED] to establish the published material has a national rather than a regional reach within country. 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 publication as required by the regulation.

Based on the aforementioned deficient evidence, the petitioner has not established that he has met the plain language requirements of 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.

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge, rather than merely being selected to serve as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner

³ 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 July 10, 2012, a copy of which is incorporated into the record of proceeding.]

seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided a photocopy of a document and a letter from [REDACTED] from [REDACTED] regarding the 1999 [REDACTED] a document titled [REDACTED] related to the 1999 [REDACTED] and a joint letter from both [REDACTED] p. The director determined that the petitioner met the requirements of this criterion. The AAO departs from the director's eligibility determination related to this criterion for the reasons outlined below.

The photocopy of a document from [REDACTED] regarding the 1999 [REDACTED] was addressed to the petitioner and indicated, "You have been assigned as a juror in the categories of [REDACTED] [REDACTED] The document also provided other information related to the upcoming Emmy event. The document is undated, but the language contained within the document makes it apparent that it is merely notification of the petitioner's selection as a juror for the event instead of evidence demonstrating that he actually served as a juror or as a judge for the event. Selection as a judge is insufficient to meet the plain language requirements of this criterion, which requires evidence of actual service as a judge. The petitioner's 1999 selection as a judge will, however be considered within the final merits determination.

The letter from [REDACTED], is also undated. [REDACTED] letter indicated that the petitioner had been selected to serve as a judge in the preliminary round of the event. [REDACTED] letter lacked any indication that the petitioner had performed in a judging role for her organization. This letter did indicate that the petitioner's name would appear in the awards publication, the *Almanac*; however, the petitioner failed to provide such evidence. As the mere selection as a judge is insufficient to meet the plain language requirements of this criterion, [REDACTED] letter is insufficient to demonstrate that the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(iv). [REDACTED] letter will however, be considered within the final merits determination.

The document titled [REDACTED]" also merely provided information relating to the date and the time of the event, and contained a separate portion under which it appeared that the petitioner replied to [REDACTED] indicating that he would attend the event. While this evidence contributed to the position that the petitioner was selected to serve as a judge for the Emmy event, it does not demonstrate that he actually served as a judge.

The petitioner also provided a letter from [REDACTED] dated June 23, 2010. Counsel's initial filing brief indicated that [REDACTED] "explains how he has sought [the petitioner's] expert judgment," and counsel quoted a portion of [REDACTED] letter. However, while [REDACTED] indicated that he has known the petitioner for close to 20 years, his letter contained no attestation regarding the petitioner performing as a judge. As such, [REDACTED]

letter will not assist in the petitioner's efforts to demonstrate that he has satisfied the plain language requirements of this criterion.

The final form of evidence the petitioner provided relating to the judging criterion is a letter from [REDACTED] dated June 30, 2010. [REDACTED] was the President and CEO of [REDACTED]. [REDACTED] letter contained no indication that he has knowledge of the petitioner serving as a judge. Consequently, [REDACTED] letter will not contribute to the petitioner meeting the plain language requirements of this criterion.

As none of the submitted evidence shows that the petitioner has actually performed as a judge, the AAO departs from the director's favorable determination as it relates to this criterion. As such, 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.

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 his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final 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 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd 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 provided several expert letters as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion by stating: "[Y]ou have submitted letters of recommendation. However, none of them can define exactly what original artistic contribution of major significance you have made, and how you have impacted your field of endeavor." On appeal, counsel merely points to three of the previously submitted expert letters.

[REDACTED] authored the first two letters noted on appeal. Counsel's appellate brief asserted that these letters demonstrate the petitioner's eligibility under this criterion "in the form of his **character development.**" (Bold emphasis in the original.) [REDACTED], indicated that he has worked in his industry for more than 40 years and he has known the petitioner for 25 of those years. [REDACTED] described the petitioner's skills and abilities, but he failed to specifically identify the impact the petitioner has had on the industry as a whole. [REDACTED] an actress, broadcaster, and spokesperson, also spoke of the petitioner's abilities as a creative producer and writer, but she too failed to identify an influence wherein the petitioner has

affected the field in a manner which is considered to be a contribution of major significance. [REDACTED] authored the final letter noted in the appellate brief. [REDACTED] an actor and spokesperson, noted some of the petitioner's accomplishments and his abilities, but [REDACTED]' letter did not explain how the petitioner has impacted his field as a whole through his work and accomplishments.

It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. The reference letters submitted by the petitioner briefly discuss his artistic skills, but they do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

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

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. As the petitioner does not contest the director's findings relating to this criterion on appeal, the AAO concurs with the director's findings.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy. The plain language requirements of this criterion requires that the work in the field is directly attributable to the alien. The alien's work also must have been displayed at an artistic exhibitions or showcases (in the plural). While neither the regulation nor existing precedent speak to what constitutes an exhibition or a showcase, Merriam-Webster's online dictionary defines exhibition as, "a public showing (as of works of art)."⁴ Merriam-Webster's online dictionary also defines showcase as, "a setting, occasion, or medium for exhibiting something or someone especially in an attractive or favorable aspect."⁵ 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 display of his work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

Counsel claims on appeal that "each DVD of television productions by [the petitioner] that were aired Nationally and Internationally and were presented within the underlying I-140 package should have been considered as evidence of [the petitioner's] work having been on display at artistic exhibitions or showcases because they are definitely 'showings' to viewers by definition." Counsel's interpretation is contrary to the plain language of the criterion, which requires that the exhibitions be artistic. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). Not every television show is an artistic exhibition or showcase as defined above.

As the petitioner's field is not within the realm of visual artists and he has not created tangible pieces of art that were on display at artistic exhibitions or artistic showcases, he cannot submit qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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

⁴ See <http://www.merriam-webster.com/dictionary/exhibition>, [accessed on June 19, 2012, a copy of which is incorporated into the record of proceeding.]

⁵ See <http://www.merriam-webster.com/dictionary/showcase>, [accessed on June 19, 2012, a copy of which is incorporated into the record of proceeding.]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a “high salary or other significantly high remuneration for services, in relation to others in the field.” Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.⁶ The petitioner must present evidence of objective earnings data showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner failed to provide evidence related to this criterion at the time he filed the petition. In response to the NOID the petitioner provided a certificate signed by [REDACTED] Development Manager dated August 10, 2005, and a salary scale, both in a foreign language. The director determined that the petitioner met the requirements of this criterion. The director stated: “[Y]ou submitted a notarized certificate of employment dated August 10, 2005 showing you earned a monthly salary of \$4,951.00. You also submitted a copy of the [REDACTED] that shows the basic average monthly salary of \$1,092.34.” The AAO departs from the director’s eligibility determination related to this criterion for the reasons outlined below.

The letter from [REDACTED] certified that the petitioner was employed as a program producer from June 14, 2005, through the date of the letter, August 10, 2005, and was compensated at a monthly rate of 4,951 local currency dollars. The translation does not include the name of the company, which is listed on the bottom of the letterhead as [REDACTED]. The translation is also defective because while the foreign language document indicates that the company paid the petitioner “\$4.951,00.- (*Pesos* cuatro mil novecientos cincuenta y uno con 00/100),” the translation states that the company paid the petitioner “\$4,951.00 (*Dollars* four thousand nine hundred fifty-one and 00/100).” (Emphasis added to both quotes.) The AAO does not have to be competent in Spanish to know that the foreign language document is referencing Pesos while the translation is referencing Dollars.⁷

The salary scale is accompanied by a translation into English titled, [REDACTED]. The regulation requires that: “Any document containing foreign language

⁶ While the AAO acknowledges that a district court’s decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

⁷ The symbol for the [REDACTED] is the same as for the U.S. dollar, “\$.” *See* www.xe.com/currency/ars-argentine-peso (accessed July 3, 2012).

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, extract and summary translations are not considered to be full translations and are insufficient to meet the requirements of the regulation. Consequently, this document is not probative and will not be accorded any evidentiary weight in this proceeding. Even if the AAO were to accept this extract translation, the evidence would remain insufficient to demonstrate the petitioner’s eligibility under this criterion as the “basic average monthly salary” (noted in the director’s decision) and the “Basic Monthly Salary Rate” (contained in the extract translation) are not appropriate measures to compare against the petitioner’s salary. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a “high salary or other significantly high remuneration for services, in relation to others in the field.” Average basic salary information is not a proper basis for comparison to the petitioner’s total compensation. The petitioner must submit documentary evidence of what constitutes a high salary or significantly high other remuneration among those in his occupation performing similar work.⁸ The petitioner must present evidence of objective earnings data showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *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).

Consequently, the AAO departs from the director’s favorable determination as it relates to this criterion. Therefore, the petitioner has not submitted evidence that meets the plain language requirements of 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.

The petitioner provided photos of a book signing, documentation from seminars given by the petitioner, and excerpts from expert letters as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion as he failed to provide sales data related to the performing arts.

⁸ While the AAO acknowledges that a district court’s decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term [extraordinary ability at] 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

On appeal, counsel asserted that the petitioner's evidence should have been considered as comparable evidence. However, the regulation at 8 C.F.R. § 204.5(h)(4) only allows an alien to submit comparable evidence if the alien is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not readily applicable to the alien's occupation. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where an alien is simply unable to meet or submit documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As the petitioner has not even attempted to demonstrate that the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not readily applicable to his occupation, the petitioner may not rely on comparable evidence to qualify for this immigrant classification. As such, no evidence that the petitioner submitted will be considered as comparable evidence.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion and he has not attempted to explain why the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not readily applicable to his occupation.

C. Summary

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

D. Final Merits Determination

Although the petitioner failed to satisfy at least three of the evidentiary criteria and a final merits determination is not required, the director performed this analysis and the AAO concurs with the director's 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.

Where the evidence of awards is only contained on the petitioner's own website, through letters from collaborators, and through certificates lacking the title of the award that the petitioner received, it is not demonstrative that this evidence is indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. Moreover, a 1978 award as a journalist is not evidence of sustained acclaim as a screenwriter or producer in October 2010 when the petitioner filed the petition.

With regard to the documentation submitted under the published material criterion, all of the petitioner's submissions were deficient in that they lacked any indication that the publications in which the published material appeared were publications whose scope or reach was at least at the national level. Without such a broad reach, none of the publications constitute a form of major media. Acclaim

in this diminished form is not representative 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. Also, the published material spans two decades but suddenly ceases with a three-year gap between the final piece of published material and the petitioner's priority date. Such evidence is not demonstrative of sustained acclaim.

The petitioner established two instances of being selected to serve as a judge of others in his field. Most notable was his selection at the [REDACTED]. Even if the AAO were to assume that the petitioner actually served as a judge, the petitioner has not established that performing judging duties in a preliminary round, while notable, is commensurate with achieving a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field, especially in October 2010 when the petitioner filed the petition. Furthermore, Ms. [REDACTED] indicated in her letter that a "blue ribbon" panel would judge the contestants in a round subsequent to the round in which the petitioner allegedly participated. Thus, the petitioner's reputation merely warranted an invitation to judge an opening round of the competition instead of a much more substantial final round. This evidence too falls short of showing that the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor.

The petitioner's claim to have made contributions of major significance rests entirely on recommendation letters. The letters submitted on behalf of the petitioner focus on his skills, and abilities to develop characters within his productions. These letters also failed to reflect any original contributions of major significance made by the petitioner and their simple repetition of the statutory and regulatory requirements is insufficient to establish his national or international acclaim. *See Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc.*, 1997 WL 188942 at *5 (S.D.N.Y.). Without demonstrating some measurable impact on the petitioner's entire field, he cannot be considered to have achieved a level of expertise demonstrating that the petitioner is one of that small percentage who have risen to the very top of his field.

The petitioner presented deficient evidence of receiving a high salary when compared to others in his field. Merely earning an above-average salary cannot demonstrate a level of expertise indicating that he is one of that small percentage who have risen to the very top of their field of endeavor. The record is absent evidence reflecting the highest salaries in the petitioner's field.

While the petitioner has served as screenwriter and producer of television programs that have aired, it is inherent to the occupation to write and produce episodes for broadcast. The petitioner's ability to make a living in his occupation, even a competitive one, does not place him at the top of his field. As stated above, pursuant to the plain reading of the statute, the appropriate comparison is with those successfully working in the petitioner's field. *Racine*, 1995 WL 153319 at *4 (concluding that the appropriate field of comparison for a hockey player is not all hockey players at all levels of play, but professional hockey players within the National Hockey League). *See also Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994) (rejecting a blanket rule for all athletes playing in the major leagues).

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a musician in the arts, 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). While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he 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 himself as a writer and a producer in the arts to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

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 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.

ORDER: The appeal is dismissed.