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

PUBLIC COPY

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[redacted]

DATE: JUN 15 2012 Office: TEXAS SERVICE CENTER [redacted]

IN RE: [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 with the field office or service center that originally decided your case by filing a 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 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 as an artist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her 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, the petitioner asserts that she meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (vii), and (viii). 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.*; 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.*

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[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[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 submitted a July 22, 2006 certificate from the Art & Artists Gallery in Miami Beach, Florida stating that she received an "Artexpresion Award of Honor" in the "Visual Emotions" art show for her work entitled "The Lily of the Valley." The petitioner did not submit evidence of the national or international *recognition* of her award, such as national or widespread local coverage of the award in arts publications 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. Moreover, a competition may be open to contestants from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." In this case, there is no documentary evidence demonstrating that the petitioner's award was recognized beyond the presenting organization and therefore commensurate with nationally or internationally recognized prize or award for excellence in the field.

On appeal, the petitioner submits an August 10, 2010 certificate stating that she was awarded a "Special Mention" at the Mumin Museum Art Show in Buenos Aires. The petitioner also submits a July 2010 certificate stating that she received an "Honorable Mention" at the International Art Show d'Estiu a Catalunya in Barcelona. The English language translations accompanying the preceding certificates were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* Further, the submitted certificates from July 2010 and August 2010 post-date the petition's February 19, 2010 filing date. Eligibility must be established 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 these certificates as evidence to establish the petitioner's eligibility. Regardless, there is no documentary evidence showing that the petitioner's honors equate to 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

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

> *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.

The petitioner submitted July 23, 2001 and July 14, 2010 letters from the Venezuelan Association of Visual Artists (VAVA) stating that she is a member. The petitioner also submitted a July 1, 2010 letter from the Beaufort Art Association (BAA) in South Carolina stating that she is a member. There is no documentary evidence (such as bylaws or rules of admission) showing that the VAVA and the BAA require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Accordingly, 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 a February 2005 article about her in *La Voz Latina* entitled "The Art of [the petitioner] Comes to Walterboro." The petitioner also submitted an October 2005 article in *La Voz Latina* entitled "Children's Painting Contest," but the article is not about the petitioner and only briefly mentions her once. 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., 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). In response to the director's request for evidence (RFE), the petitioner submitted a July 14, 2010 letter from the Editor of *La Voz Latina* stating: "*La Voz Latina* is a monthly bilingual newspaper serving South Georgia and Coastal South Carolina.

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[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

14,000 free copies are distributed throughout this region on the first Thursday of each month." USCIS need not rely on self-promotional material. *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). There is no evidence (such as objective circulation information from an independent source) showing the distribution of *La Voz Latina* relative to other U.S. publications to demonstrate that the newspaper qualifies as a form of "major" media.

The petitioner submitted a November 4, 2004 article about her in *Comunidad* entitled "Venezuelan Art has gone beyond borders." The petitioner also submitted an article in *Comunidad* entitled "The Libre en Cristo Hispanic Church," but the article is not about the petitioner. Instead, the article is about the church and its activities. Further, the date of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). There is no documentary evidence showing that *Comunidad* qualifies as a form of major media.

The petitioner submitted a March 2009 article about her in *La Isla Magazine*, but the author of the material was not identified as required by the plain language of this regulatory criterion. In response to the director's RFE, the petitioner submitted a letter from the President and Publisher of *La Isla Magazine* stating: "*La Isla Magazine* is the only free, general interest, bilingual monthly digest size magazine in the Low Country of South Carolina and Georgia." There is no circulation evidence showing that this regional magazine qualifies as a form of major media.

The petitioner submitted an article entitled "At the Braulio Salazar Gallery XVIII AVAP Exposition in honor of Simon Guedez," but the author of the article, its date of publication, and the name of the publication in which the article appeared were not identified as required by this regulatory criterion. Further, the article is not about the petitioner and only briefly mentions her among numerous artists who participated in the exposition. Moreover, there is no documentary evidence showing that the article was in a professional or major trade publication or some other form of major media.

On appeal, the petitioner submits a November 12, 2010 article about her in *The Press and Standard* (Walterboro, South Carolina) and a November 18, 2010 article about her in *The Dispatch* (Lexington, South Carolina). These articles post-date the petition's February 19, 2010 filing date. As previously discussed, eligibility must be established 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 preceding articles as evidence to establish the petitioner's eligibility. Regardless, there is no documentary evidence showing that the preceding local newspapers qualify as major media.

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

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

The petitioner submitted documentary evidence demonstrating that she has displayed her work at artistic exhibitions and showcases. Accordingly, the AAO affirms the director's finding that the petitioner meets the plain language requirements of 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 a July 1, 2010 letter from Sandra Dimke, Treasurer, BAA, stating:

> [The petitioner] is a member in good standing of the Beaufort Art Association. In this capacity she will further her art education with classes, lectures and workshops that are offered by the organization on a monthly basis.
>
> [The petitioner] has also been accepted as an exhibiting member where her work will be on display for sale and critique. As an exhibiting member, [the petitioner] is required to volunteer on a standing committee, show new work every 6 weeks, and work one day a month as a docent at the Beaufort Art Association Gallery where she will assist visitors in art appreciation.

The petitioner submitted a July 14, 2010 from [redacted], President, VAVA, stating: "[The petitioner] is an active member of our institution from the year 2000 and has developed as an instructor and promoter of the Visual Arts, having received important institutional recognition."

On appeal, the petitioner states: "My exhibiting membership and the fact that I serve on the standing committee of the Beaufort Art Association, together with my special role as an instructor and promoter of the arts in the Venezuelan Association of Visual Artists, should qualify me for this criterion."

With regard to the BAA and the VAVA, there is no supporting evidence showing that these organizations have a distinguished reputation. 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)). Further, there is no documentary evidence showing that the petitioner's roles for the BAA and the VAVA were leading or critical. For example, there is no organizational chart or other evidence documenting where the petitioner's positions fell within the general hierarchy of the preceding organizations. The petitioner's evidence fails to demonstrate how her responsibilities for the BAA and the VAVA differentiated her from the other members holding similar appointments, let alone the organizations' elected officers and senior leadership. The documentation submitted by the petitioner does not establish that she was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that she meets this regulatory criterion.

B. Summary

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

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[4] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).